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INTERIM STUDY  
BY THE  
SUBCOMMITTEE ON JUDICIARY

STATE OF MONTANA  
PLANNING DIVISION

# Montana's District Courts

December 1976

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# MONTANA'S DISTRICT COURTS

A REPORT TO THE  
FORTY-FIFTH LEGISLATURE

SUBCOMMITTEE ON JUDICIARY

December 1976

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# TABLE OF CONTENTS

	<u>Page</u>
LIST OF TABLES AND GRAPHS . . . . .	v
ACKNOWLEDGEMENTS. . . . .	1
<i>SUMMARY OF RECOMMENDATIONS.</i> . . . .	3
1 INTRODUCTION. . . . .	5
2 STATE TRIAL COURT REFORM. . . . .	9
3 MONTANA'S JUDICIAL DISTRICTS. . . . .	13
4 COURT ADMINISTRATION. . . . .	41
5 STATE FINANCING OF THE TRIAL COURTS . . . . .	45
6 NONJUDICIAL COURT PERSONNEL . . . . .	57
7 OTHER TOPICS AND SUMMARY. . . . .	65
COMMITTEE DELIBERATIONS AND RECOMMENDED LEGISLATION . . . . .	71
FOOTNOTES . . . . .	79
BIBLIOGRAPHY. . . . .	89
APPENDICES. . . . .	97
A Summary of Jurisdiction Exercised by Montana Courts. . . . .	99
B District Judge Vital Statistics. . . . .	101
C Duties of Court Administrator. . . . .	103
D Administrative Districts Proposed by Chief Justice Harrison. . . . .	107
E Judicial Districts With 1974 Case- filings by County. . . . .	109
F Judicial Districts With 1970 Populations by County. . . . .	111
G 1974 District Ranks (casefilings, population, etc.). . . . .	113
H 1960 - 1974 Casefilings by District and by County. . . . .	115

	<u>Page</u>
I 1970 Casefiling - To - Population Ratio by County. . . . .	.119
J 1960 - 1970 Population Statistics and Changes. . . . .	.123
K 1960, 1970 Relationship Between Casefilings and Population . . . . .	.125
L 1960 - 1974 Casefiling Change. . . . .	.127
M Miles Driven by Individual Judge . . . . .	.129
N 1974 Relationship Between Judge Miles Driven and District Area . . . . .	.131
O 1974 Number of Attorneys by District . . . . .	.133
P LETTER - John Van, Clerk of District Court, Kalispell . . . . .	.135
Q Selected Data on Court Administrative Officer -- Creation. . . . .	.137
R Selected Data on Court Administrative Officer -- Expenses. . . . .	.139
S Bill to Create the 19th District, Alter Certain District Boundaries, and to Create Three New Judgeships. . . . .	.141
T Bill to Establish Office of Court Administrator. . . . .	.145
U Bill to Fund Court Reporters . . . . .	.147
V Bill to Establish Judicial Training Standards. . . . .	.149
W Bill to Fund Law Clerks. . . . .	.151
X Resolution to Provide Court Data to the Legislature. . . . .	.153
Y Resolution to Provide that Secretarial and Law Clerk Assistance be Explored by the Supreme Court . . . . .	.155

# LIST OF TABLES AND GRAPHS

<u>ITEM</u>	<u>TOPIC</u>	<u>Page</u>
Map	Montana's Judicial Districts . . . . .	16
<u>TABLES</u>		
1	Judicial Districts -- Demographic Data . . . . .	17
2	Demographic Data Rankings. . . . .	19
3	Casefiling Per District, 1960-1974 . . . .	20
4	Casefiling Per Judge, 1960-1974. . . . .	21
5	Summary of Casefilings . . . . .	22
6	Percentage Changes In Casefilings, 1960-1974. . . . .	26
7	Casefiling to Population Ranks, 1974 . . .	27
8	Casefiling to Population Ratio . . . . .	28
9	District Rankings by Area and by Judge Miles Driven . . . . .	29
10	Miles Driven by District, 1974 and 1975 . . . . .	30
11	Circuit Mileage of District Judge. . . . .	31
12	Circuit Mileage and Miles Driven Compared . . . . .	32
13	Population -- Casefiling Changes, 1960-1974. . . . .	33
14	Judge Disqualifications By District, 1960-1974. . . . .	36
15	Civil and Criminal Casefilings by District, 1960-1974. . . . .	38
16	District Court Expenditures, 1974: Per Capita by County and District. . . .	46
17	District Court Expenditures: Per Capita Cost by County, 1974. . . . .	49

18	State Expenditures For District Court Operations, 1973-1977. . . . .	52
19	Judicial Expenditures of State and Local Governments. . . . .	55
20	State-Local Sharing of Court Expenditures - All States. . . . .	56

GRAPHS

1	Casefiling Continuum by Judge, 1964. . . .	23
2	Casefiling Continuum per Judge, 1974 . . .	24



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The subcommittee acknowledges the assistance of the Montana Supreme Court, especially that of Chief Justice James T. Harrison, who aided the subcommittee in numerous ways. The subcommittee also extends its gratitude to the court administrator, to the staff of the Montana Crime Control Board, the Montana Justice Project, and the State Commission on Local Government, and to Professor Ellis Waldron of the University of Montana for their contributions. Finally, and most importantly, the subcommittee thanks Gloria Schlosser, Annell Russell, Pamela Duensing, Eleanor Eck, Debbie Williams, and Rick Newby of the Legislative Council staff for their assistance in editing and typing this report.



## SUMMARY OF RECOMMENDATIONS

The Subcommittee on Judiciary recommends that the 1977 Montana Legislature:

- (1) Enact a bill to create the nineteenth judicial district and to establish three new judgeships, one each in the thirteenth, eighteenth, and nineteenth judicial districts;
- (2) Enact a bill to establish the Office of Court Administrator;
- (3) Enact a bill to provide that the state pay the salaries and expenses of court reporters;
- (4) Enact a bill to provide for the establishment of judicial training standards for appellate and trial court judges;
- (5) Pass a resolution requesting the Chief Justice of the Montana Supreme Court to include with his message to the legislature a statistical report on the business transacted by the district courts;
- (6) Pass a resolution expressing the sense of the legislature that the use of law clerk and secretarial assistance to district judges be explored further before any subsequent legislature creates new judgeships;
- (7) Appropriate \$150,000 for law clerks to district judges.



*Judicial reform is not a  
sport for the short-winded.*  
-Arthur T. Vanderbilt

1

## INTRODUCTION

The constitution of Montana directs the legislature to divide the state into judicial districts and to provide for the number of judges in each district. The constitution stipulates that each district be formed of compact territory and be bounded by county lines. The legislature may alter the district boundaries and the number of judges in each district. However, no legislative change may cause the removal of a judge during the term for which he was elected or appointed.<sup>1</sup>

There are presently eighteen judicial districts and twenty-eight district judges in Montana. In the past there have been as many as twenty judicial districts and thirty judges and as few as eight districts and eight judges.

During the 1975 Montana legislative session, three bills were introduced that would have created three new judgeships and one additional judicial district.<sup>2</sup> The authors testified that their bills were designed to alleviate problems in the administration of justice. They stated that the legislature had not added any judges to the judiciary since 1963, that since then caseloads had burgeoned, and that some judges were burdened by the great distances they were required to travel to fulfill their obligations.<sup>3</sup>

Several individuals suggested during the debate on these bills that a thorough study of the district courts be conducted before legislation was enacted to expand the judiciary. The Chief Justice of the Montana Supreme Court, James T. Harrison, cautioned the legislature to proceed carefully in expanding or in reorganizing the district courts. He stated that, although caseloads had risen sharply in recent years, a complete survey of the judicial districts was needed to determine judicial manpower requirements.<sup>4</sup> Others noted that legislative changes in the district courts in the past had occurred without benefit of prior analysis.<sup>5</sup>

The Senate Committee on Judiciary decided to kill the three bills. The committee recommended that a study of the district courts be undertaken during the 1975-1976 interim. In a letter to the chairman of the Priorities Committee, the chairman of the Senate Committee on Judiciary stated that the members of his committee believed a more comprehensive approach to the problems of the district courts was needed than was addressed by the three 1975 bills. "The judicial districts as they now exist," he stated, "are not organized and staffed in a manner suited to provide adequate services to all areas . . . therefore, we request that a study be commissioned to result in a reorganization of Montana's system of judicial districts."<sup>6</sup>

The Committee on Priorities concurred. The committee assigned the study to the Subcommittee on Judiciary.<sup>7</sup>

## II

The Subcommittee on Judiciary was charged with developing a proposal for presentation to the 1977 legislature that would reorganize the judicial districts to account for inequalities that had arisen as the result of changes in populations and caseloads.<sup>8</sup> Underlying the subcommittee's mandate were three assumptions: that great disparities existed in the populations, caseloads, and physical areas of the judicial districts; that these disparities resulted in the inefficient use of judicial resources; and that re-districting and the addition of new judgeships alone would produce an efficiently managed judiciary.

The subcommittee immediately encountered a major problem in attempting to test the assumptions that underlay its study. Reliable information on the district courts was nonexistent. No individual or agency had ever gathered judicial data in Montana on any kind of a continuing basis.

Two research groups -- one in 1966 and one in 1973 -- had gathered judicial caseload statistics. Both groups, however, employed different methodologies and both groups carefully qualified the reliability of their statistics; the researchers painfully noted that those from whom they requested information were often uncertain as to what information was wanted.<sup>9</sup> No uniform method of recordkeeping and reporting existed in the district courts.

Without reliable data, no study of the district courts could presume to be very meaningful. The present efficiency of the courts could not be assessed. Nor could an evaluation be made of judicial manpower requirements. Indeed, the lack of data proved false the assumption that restructuring the judicial districts alone would cure whatever maladies afflict the courts.

One of the major concerns of the subcommittee, then, was to ensure that court data would be collected and analyzed on a regular basis in the future. Hence, the subcommittee moved beyond its mandate and studied the need to establish the office of court administrator.<sup>10</sup>

To fulfill its own, more immediate requirements for data, the subcommittee prepared and distributed a survey to the clerks of district court. In their survey, the subcommittee requested case-filing data for 1960, 1964, 1970, and 1974. The results of this statistical survey are reflected in the tables, charts, graphs, and appendices contained in this report.

That the statistical survey yielded data of conditional reliability was perhaps to be expected. (See Appendix P.) Gathering meaningful data is not a task for the inexperienced. The researcher

for the subcommittee, moreover, heard the familiar complaint that the clerks of court often were uncertain as to what information was wanted. The clerks use different methods of recording court cases and have different conceptions of classifying court procedures. Until a uniform system of cataloguing and reporting court cases is implemented, collecting meaningful judicial data in Montana will continue to resemble Penelope's attempts to weave a shroud for her father-in-law.<sup>11</sup>

The subcommittee supplemented its statistical information by soliciting -- via opinion surveys and public hearings -- the views of the judges and of members of the bar on a variety of judicial topics. The subcommittee wanted to know what types of problems the judges faced and what kinds of assistance would alleviate those problems. For instance, what role should nonjudicial court personnel have in the judicial process? Were additional personnel, such as law clerks and secretaries, needed? Perhaps more than redistricting was required to establish a more effective judiciary.

### III

This report details the information gathered and analyzed by the subcommittee and its researcher. The report describes the past and present structure of the district courts, reviews procedures employed to evaluate the work of the courts, looks at roles of nonjudicial personnel, such as a court administrator, and reviews court financing, judge disqualification, and a few other court-related topics.

The tables, graphs, charts, and appendices in this report portray a variety of information. Data on the number of miles the judges travel, which were provided by the court administrator, are shown, for example. However unsophisticated the statistics might be, they are revealing of inequalities among the judges and the districts.

This report is not an exhaustive treatment of the district courts. Limitations of time and resources precluded a thorough analysis of all the judicial topics that require study. For instance, a cost analysis of the expenditures of the district courts, which has never been done in Montana, was not attempted; cost analysis requires a special expertise.

The subcommittee, moreover, did not study all aspects of the judiciary. Judicial salaries, for example, were considered more properly the purview of the constitutionally mandated Salary Commission.<sup>12</sup> The judiciary outside of the district courts was not reviewed. Several studies of the various levels of Montana's courts have been completed, and others, apart from the subcommittee's work, are in progress.<sup>13</sup>





*The prescription for the  
ills of the trial courts  
has many necessary in-  
gredients. -*  
Harry W. Jones

2 STATE TRIAL COURT REFORM

State district courts are trial courts of general jurisdiction. In Montana, and in most other states, trial courts of general jurisdiction have authority to adjudicate all types of cases -- civil litigation, criminal prosecution, equity suits, and probate matters. Indeed, nearly all civil and criminal actions originate in trial courts of general jurisdiction.<sup>14</sup> And state (and federal) trial judges annually dispose of nearly 99 percent of the judicial workload of American courts.<sup>15</sup>

In most states, including Montana, general trial courts are established on a geographical basis to provide citizens with convenient access to them. Usually a state is divided into judicial districts or circuits and a court is established for each geographical entity. Most state constitutions, including Montana's, delegate to the legislature the authority to determine the number of judicial districts, the boundaries of the districts, and the number of judges in each district.<sup>16</sup>

State legislatures generally have succeeded in creating ill-proportioned judicial districts.<sup>17</sup> While many a state's judicial districts were well-balanced at statehood, the districts soon came to resemble a haphazardly arranged jig-saw puzzle.<sup>18</sup>

In time, increases and shifts in populations and in caseloads unbalanced the judicial districts. Rather than readjust the entire system, legislatures opted for easier, less controversial solutions to the problem that confronted the harder working judges. As one trial judge observed more than sixty-five years ago:

It is inevitable that whenever any district becomes too large in its labors or docket, or any judge unduly burdened, little or no serious effort will be made to readjust the entire system since too many judges are involved. To rearrange districts so as to give the judge of some light district more work and relieve the over-burdened judge is unlikely to be done. The inertia is too great.... It is much easier to make a new district or add a new judge to a heavy district.<sup>19</sup>

Only recently have states undertaken to establish rational criteria upon which to evaluate the need to alter their judicial districts.<sup>20</sup> Ohio and New Hampshire, for example, employ population as a criterion to determine the number of trial judges in a district, e.g., in Ohio

one judge for every 30,000 persons. Iowa combines population, population density, and casefilings, e.g., in districts without a major city there is one judgeship per 450 casefilings and 40,000 in population. Perhaps the most sophisticated and innovative method is used by California. California utilizes a "weighted caseload system," which involves calculating the time the "average" judge spends on a case and dividing that into the number of casefilings to determine the number of judges.

These criteria -- population, population density, casefilings, and weighted caseloads -- have been used primarily to gauge the need for additional judgeships. It is "a judicial fact of life," one writer stated, "that there can be no substitute for increasing the number of judges" in a growing society.<sup>21</sup> However, these criteria also can be used to justify redistricting.

In Kansas, for example, a 1967 report to the legislature revealed that Kansas's judicial districts were unequal by nearly every standard. Caseloads per judge were especially uneven. Using a combination of caseload and population data, the legislature greatly reduced the inequalities in per judge caseloads. Districts with low caseloads were eliminated and their component counties were assimilated into other districts. Before reapportionment, the hardest working judges handled 623 percent of the caseload of the least burdened judge -- 25.5 percent of the judges had caseloads under 300. After reapportionment, only 7 percent of the judges had caseloads under 300.<sup>22</sup>

The objectives of those states, like Kansas, that have revised their judicial districts according to an established criteria have been two-fold. First, they sought "to develop districts that will assure adequate, accessible and frequent court service." Second, they attempted "to create districts that will assure efficiency for the taxpayers who are footing the bill".<sup>23</sup>

The recent efforts of some states to establish more balanced judicial districts stem, in part, from what one writer called "the mid-century law explosion."<sup>24</sup> In the past fifty years, population has increased dramatically; new social interests have pressed for recognition in the courts; groups long inarticulate have found legal spokesmen; government statutes and regulations have burgeoned. All have added grist to the judicial mills. In many jurisdictions, and especially at the trial court level the resultant court congestion has become virtually unmanageable.<sup>25</sup> Circumstances have forced state legislatures to evaluate the efficiency and the needs of the trial courts.<sup>26</sup>

Judicial authorities generally agree upon the diagnosis underlying the plague of courtroom delay. There is "too much work for too few judges to do in the ways they are traditionally supposed to do it."<sup>27</sup> They caution, however, that an undue preoccupation with delay can lead to "expediting gimmicks" that do not enhance the administration of justice.<sup>28</sup>

The problem of court congestion, these experts point out, is not a new phenomenon. Hammurabi, the king of ancient Babylon, denounced it. Shakespeare immortalized it; Hamlet, in compiling his list of the dolorous burdens of mankind, ranked the "law's delay" between the "pangs of disprized love" and the "insolence of office." The "last universal genius," Johann Wolfgang von Goethe, recalled that in eighteenth-century Germany cases were filed twice as fast as they were disposed. In one German province, cases remained on the docket for over one hundred years. In the United States the New York Supreme Court reported a backlog as early as 1800.<sup>29</sup>

## II

If court backlog is not new, the reasons for the present backlog may be. The "solutions" of the past may not fit the difficulties of the present. Thus, the extent of backlog in any jurisdiction must be determined, and the nature of the delays evaluated, before accurate remedies can be prescribed.

The creation of new judgeships -- an oft-proposed solution to increasing caseloads -- alone may not be the cure to the malady of court backlog. It also may not be the cure that best promotes efficient use of judicial resources. According to one authority on judge workloads:

...across the board additions of new judgeships are not necessarily the answer .... the creation of more judgeships can be an arbitrary process which often turns on which political party is in office or on how effectively a district can lobby before the state judiciary committee .... Judicial time is a resource that must not be wasted.<sup>30</sup>

The prescription for the ills that afflict the trial courts, one law professor stated, may include several ingredients.<sup>31</sup> In the past fifteen years, many states have reformed the structure of their trial courts. Some, like Idaho, have included changes in the trial courts in a total reorganization of the judiciary, from the lowest to the highest court.<sup>32</sup> Others have concentrated upon modernizing trial court procedures. Still others, like Iowa and Kansas, have simultaneously created additional judgeships and radically realtered judicial district boundaries. Nearly all states have established court administrators to better plan and account for court operations.<sup>33</sup>

## III

No meaningful evaluation of the problems and needs of the trial courts, however, is possible without complete and accurate statistics. Successful solutions to court problems cannot be rendered

in a vacuum. To quote one student of judgeship evaluation:

Without the facts and figures being available to them, no legislature or court can possibly make an accurate assessment of 1) which jurisdictions have backlogs; 2) what each judge is actually doing; 3) whether or not some judges are over-worked and unable to keep their dockets current; 4) which judges could be assigned elsewhere; 5) if judicial manpower is so distributed that all judges are being fully utilized; 6) if more courts are needed; 7) if some areas are over- or under-staffed; 8) what the jurisdiction of the court should be; 9) if any additional judges are needed.<sup>34</sup>

Where statistics exist, they aid legislatures in the task of increasing judicial efficiency.

The value of judicial statistics, moreover, diminishes considerably if the data are not gathered and analyzed on a continuing basis. A primary objective of court statistics is the identification of backlog, of jurisdictions that need assistance. Once those areas are identified and remedies implemented, statistics are needed to determine the effectiveness of the solutions.<sup>35</sup>

Sound judicial data are vital to managing and improving the courts. Without the information that statistics provide, a judicial system is not accountable to the citizens who benefit from and fund the courts. Imagine a corporation, like General Motors, operating without the benefit of sophisticated statistical analyses.

Surprisingly, then, court statistics in most states are "woefully inadequate."<sup>36</sup> With few exceptions, states do not provide a detailed breakdown of cases filed and disposed in their courts.<sup>37</sup> Until 1970, Pennsylvania and Indiana gathered "no" statewide statistics showing the comparative volume of judicial caseloads by districts. *Montana* and Mississippi still do not. But Mississippi does have an elaborate educational program for judges and a sophisticated system for providing legal research information to members of the bench and of the bar.<sup>38</sup>

Judicial statistics provide general information to the public and help channel legislative action into those areas of the judicial structure most in need of assistance. In the absence of sound judicial data, "assumptions are asserted as facts and conjecture as concrete suggestions."<sup>39</sup> Furthermore, without statistics, it is impossible to determine a prescription for whatever ails the courts -- whether a remedy dictates the addition of judgeships, judicial district reapportionment, the establishment of a court administrator, state court financing, or one or more of several medications.

*Legislative districting of  
the state has not established  
a well balanced judiciary. -  
David R. Mason and William  
F. Crowley*

### MONTANA'S JUDICIAL DISTRICTS

The 1889 Montana Constitution established eight judicial districts. Each district encompassed one or more of Montana's sixteen counties, and each district was allotted one judge.<sup>40</sup>

The constitution recognized that circumstances might arise that would necessitate changes in the judicial districts. The constitution delegated to the legislature the authority to increase or decrease the number of districts and judgeships.<sup>41</sup>

The legislature altered the structure of the district court system on twenty occasions between 1891 and 1963.<sup>42</sup> On only one of those occasions, in 1929, did the legislature possess an overall statistical view of the district courts. The legislature generally implemented changes in the district courts on an *ad hoc* basis.

Between 1891 and 1929 alone, legislative enactments resulted in sixteen changes in the judicial districts. By 1919, there were twenty judicial districts and thirty district judges -- two more districts and two more judges than exist today.<sup>43</sup>

Increases in population undoubtedly influenced the creation of additional judges and districts. From 1890 to 1920, Montana's population increased four-fold, from 142,924 to 548,889.<sup>44</sup> Litigation no doubt rose similarly. As one writer stated, "More people will generate more judicial work regardless of the judicial system...as population increases, so do the contacts that individuals have with each other and increased contacts give rise to increased conflicts that can only be settled in our courts."<sup>45</sup>

Political considerations, however, dominated the establishment of additional districts and judgeships. The contiguity of county-splitting and the creation of new judicial districts was no mere coincidence.<sup>46</sup> Juxtaposed throughout the session laws from 1900 to 1920 are bills establishing new counties, new judicial districts, and new judgeships. Many legislators desired the status of having their own district judge, and in a state as vast as Montana, the expansion of the judiciary was easily rationalized -- citizens wanted access to their courts.

Whether the plethora of newly created judgeships and judicial districts contributed to the efficient administration of justice is impossible to determine. No studies or statistical analyses preceded these additions to the judiciary. Unforeseen events, however, soon compelled legislative consideration of judicial manpower requirements.

The Great Depression struck Montana long before it devastated the rest of the nation. The Montana land "boom" of the 1910's had become a "bust" by 1921. Drought forced thousands of "honyockers" to flee Montana. Many counties lost population as fast as they had gained it. As one student of Montana history commented, "Some of the new counties (there were 56 by 1925) must have been losing population before they got their courthouses built."<sup>47</sup>

The people who remained in Montana faced the expense of newly created county governments and a greatly increased demand for welfare and farm assistance. Great pressure existed to curb costs and to increase efficiency in all areas of government, including the judiciary.

In 1929 the legislature commissioned a special committee to study the "business transacted by the several District Courts of the State." As a result of the study, the legislature completely reorganized several judicial districts and entirely eliminated three districts and seven judges. This legislative redistricting of the courts, the chairman of the special committee stated, would save the taxpayers \$70,000 "without injury to the litigants of the state."<sup>48</sup> Economic depression and decreases in population, accompanied by reduced judicial caseloads, had indicated the need to alter the judiciary.

The special committee's study of the judicial districts covered a five year period of judicial caseloads. Although the committee believed its information was accurate, it noted that "not all clerks of court understood what information was desired." The committee believed its work had been valuable. It also believed that "further data (could) be secured...which might be valuable to future assemblies, should redistricting ... again arise." The committee recommended that a permanent committee be established to collect and analyze judicial data on a continuing basis.<sup>49</sup>

Nothing resulted from this latter recommendation of the special committee. No committee or agency was established to evaluate the judiciary. No statistics were collected; no system of reporting data was implemented.

During the next forty-seven years, from 1929 to 1976, Montana's judicial districts remained relatively unaltered. The legislature created the eighteenth judicial district in 1947; Gallatin County was dropped from the sixth district and established as the eighteenth.<sup>50</sup> One judge was allotted to the eighteenth. Four more judges were added in the ensuing years to various districts -- one to District 13 in 1955; one to District 11 in 1957; one to District 8 in 1959; and one to District 4 in 1963.<sup>51</sup> These additions brought the totals to the present eighteen districts and twenty-eight district judges.

The districts that received additional judges from 1955 to 1963 probably had experienced substantial population growth. Each of

these districts contains a heavy urban center.<sup>52</sup> Perhaps the increase in the concentration of people necessitated additional judicial personnel. The absence of reliable data, however, renders any judgement moot.

## II

By nearly any criterion, Montana's judicial districts are today ill-proportioned. Population in the eighteen judicial districts range from 110,205 in the 13th District to 9,316 in the 14th. Population density extends from 58.71 persons per square mile in the 2nd District to 1.31 in the 16th. In physical area, the largest district is the 16th, which encompasses 23,212 square miles. The smallest is the 2nd Judicial District with an area of 715 square miles. (See Map; Tables 1 and 2.)

Montanans might expect that their judicial districts would be asymmetrical. Montana is a large state, composed of heterogeneous elements. The eastern and western portions of the state differ in physical area, population density, topography, and socio-economic characteristics. Aligning the judicial districts strictly by demographic criteria might be difficult.<sup>53</sup>

The disparity of the judicial districts, however, is just as pronounced when measured by casefiling data. According to statistics collected by the Subcommittee on Judiciary, casefilings per district for 1974 ranged from 3,599 in District 13 to 218 in District 14. Casefilings per judge ranged from 1,200 to 218. Based upon these statistics, then, the harder-working judges have 550 percent more caseload than the less-burdened judges. (See Tables 3 and 4.)

The inequality in casefilings per judge (and per district), moreover, has existed for at least fifteen years. And the gap has increased at a fairly constant rate from 1960 to 1975. (See Table 5; Graphs 1 and 2.)

The statistics for 1974 illustrate well the disparity in casefilings per judge. Had casefilings, for example, been equalized in 1974, each judge would have had 676 casefilings. Instead, twelve judges received over 900 casefilings, while eight judges had under 450. The casefilings of the remaining eight judges ranged from 569 to 699. Thus, twenty of the twenty-eight district judges (71 percent) had casefilings substantially above or below the hypothetical average of 676. (See Graph 2.)

The casefiling statistics are revealing in other respects as well. The figures show that total district court casefilings rose substantially between 1960 and 1974, from 12,863 to 18,931 -- an increase of 47.1 percent. (See Table 6.) In seven districts, the casefilings increased dramatically: 122 percent in District 1; 138 percent in District 4; 62 percent in District 5; 45 percent in District 10; 158 percent in District 11; 63 percent in District 13;

## MONTANA JUDICIAL DISTRICTS





TABLE 1

## JUDICIAL DISTRICTS, 1975

District	No. Judges	Counties	Population*	Area Sq. Miles	District Population	District Area	Population Per Judge
1	2	Lewis and Clark Broadwater	33,281 2,526	3,476 1,193	35,807	4,669	17,903.5
2	2	Silver Bow	41,981	715	41,981	715	20,990.5
3	1	Powell Granite Deer Lodge	6,660 2,737 15,652	2,336 1,733 740.	25,049	4,809	25,049
4	3	Missoula Mineral Lake Ravalli Sanders	58,263 2,958 14,445 14,409 7,093	2,612 1,222 1,494 2,382 2,798	97,168	10,509	32,389.3
5	1	Beaverhead Jefferson Madison	8,187 5,238 5,014	5,551 1,652 3,528	18,439	10,731	18,439
6	1	Park Sweet Grass	11,197 2,980	2,626 1,840	14,177	4,466	14,177
7	1	Dawson McCone Richland Wibaux	11,269 2,875 9,837 1,465	2,370 2,607 2,079 890	25,446	7,946	25,446
8	3	Cascade Chouteau	81,804 6,473	2,661 3,927	88,277	6,588	29,425.6
9	1	Teton Pondera Toole Glacier	6,116 6,611 5,839 10,783	2,294 1,645 1,950 2,964	29,349	8,851	29,349

TABLE 1 (cont'd)

District	No. Judges	Counties	Population*	Sq. Miles	District Population	District Area	Population Per Judge
10	1	Fergus Judith Basin Petroleum	12,611 2,667 675	4,242 1,880 1,655	15,953	7,777	15,953
11	2	Flathead Lincoln	39,460 18,063	5,137 3,714	57,523	8,851	28,761.5
12	1	Liberty Hill Blaine	2,359 17,358 6,727	1,439 2,927 4,265	26,444	8,631	26,444
13	3	Yellowstone Big Horn Carbon Stillwater Treasure,	87,367 10,057 7,080 4,632 1,069	2,642 5,023 2,066 1,794 985	110,205	12,510	36,735
14	1	Meagher Wheatland Golden Valley Musselshell	2,122 2,529 931 3,734	2,354 1,420 1,176 1,887	9,316	6,837	9,316
15	1	Roosevelt Daniels Sheridan	10,365 3,083 5,779	2,385 1,443 1,694	19,227	5,522	19,227
16	2	Custer Carter Fallon Prairie Powder River Garfield Rosebud	12,174 1,956 4,050 1,752 2,862 1,796 6,032	3,756 3,313 1,633 1,730 3,288 4,455 5,037	30,622	23,212	15,311
17	1	Phillips Valley	5,386 11,471	5,213 4,974	16,857	10,187	16,857
18	1	Gallatin	32,505	2,517	32,505	2,517	32,505

\*County population and area figures from U.S. Department of Commerce, Bureau of the Census, 1970 Census of Population; Number of Inhabitants: Montana (Washington: U.S. Government Printing Office, 1970), p. 12.

TABLE 2  
Population, Population Density, Area, and Ranks

District	No. Judges	1970 Population	Pop. Density (Per Sq. Mi.)	Area Sq. Miles	1970 Pop. Rank	Pop. Density Rank	Dist. Area Rank
1	2	35,807	7.66	4,669	6	6	15
2	2	41,981	58.71	715	5	1	18
3	1	25,049	5.20	4,809	12	8	14
4	3	97,168	9.24	10,509	2	4	4
5	1	18,439	1.71	10,731	14	15	3
6	1	14,177	3.17	4,466	17	12	16
7	1	25,446	3.20	7,946	11	11	9
8	3	88,277	13.39	6,588	3	2	12
9	1	29,349	3.31	8,851	8	10	6
10	1	15,953	2.05	7,777	16	14	10
11	2	57,523	6.49	8,851	4	7	7
12	1	26,444	3.06	8,631	10	13	8
13	3	110,205	8.80	12,510	1	5	2
14	1	9,316	1.36	6,837	18	17	11
15	1	19,227	3.48	5,522	13	9	13
16	2	30,622	1.31	23,212	9	18	1
17	1	16,857	1.65	10,187	15	16	5
18	1	32,505	12.91	2,517	7	3	17
18	28	694,409	4.8	145,587			

TABLE 3

## CASEFILING PER DISTRICT, 1960-1974

<u>District</u>	<u>No. Judges</u>	<u>1960</u>	<u>1964</u>	<u>1970</u>	<u>1974</u>	
1	2	602	708	1039	1340	
2	2	986	1017	1058	1295	
3	1	634	586	691	640	
4	3	1173	1471	1875	2803	
5	1	277	290	395	449	
6	1	343	245	273	396	
7	1	542	744	513	569	
8	3	2341	2956	1665	2910	
9	1	673	643	787	646	
10	1	207	293	257	301	
11	2	793	1063	1664	2049	
12	1	681	586	524	699	
13	3	2205	2634	2867	3599	
14	1	228	209	204	218	
15	1	305	331	309	316	
16	2	460	498	495	591	
17	1	336	492	454	374	
18	1	595	621	798	966	
<hr/>						
<hr/>						
TOTALS	18	28	12,863	14,755	14,941	18,931

TABLE 4

## CASEFILING PER JUDGE, 1960-1974

District	No. Judges	1960 CPJ	1964 CPJ	1970 CPJ	1974 CPJ
1	2	301	354	520	670
2	2	493	509	529	648
3	1	634	586	691	640
4	3	391	490	625	934
5	1	277	290	395	449
6	1	343	245	273	396
7	1	542	744	513	569
8	3	780	989	555	970
9	1	673	643	787	646
10	1	207	293	257	301
11	2	397	532	832	1,025
12	1	681	586	524	699
13	3	735	878	956	1,200
14	1	228	209	204	218
15	1	305	331	309	316
16	2	230	249	248	296
17	1	336	492	454	374
18	1	595	621	798	966

TABLE 5

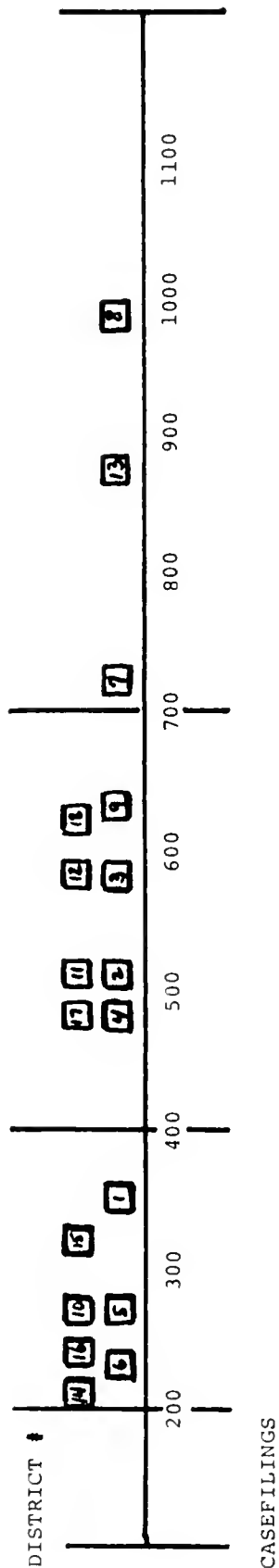
## Average and Range of Casefilings

Year	No. Dist.	No. Judges	Casefilings	Average		Judges		Range	
				Per. Judge	Average	Above Mean	Below Mean	Per Dist.	Per Judge
1960	18	28	12,863	459		13	15	2341-207	780-207
1964	18	28	14,755	526		13	15	2956-209	989-209
1970	18	28	14,941	534		14	14	2867-204	956-204
1974	18	28	18,931	676		13	15	3599-218	1,200-218

GRAPH 1

CASEFILING CONTINUUM PER JUDGE

1964



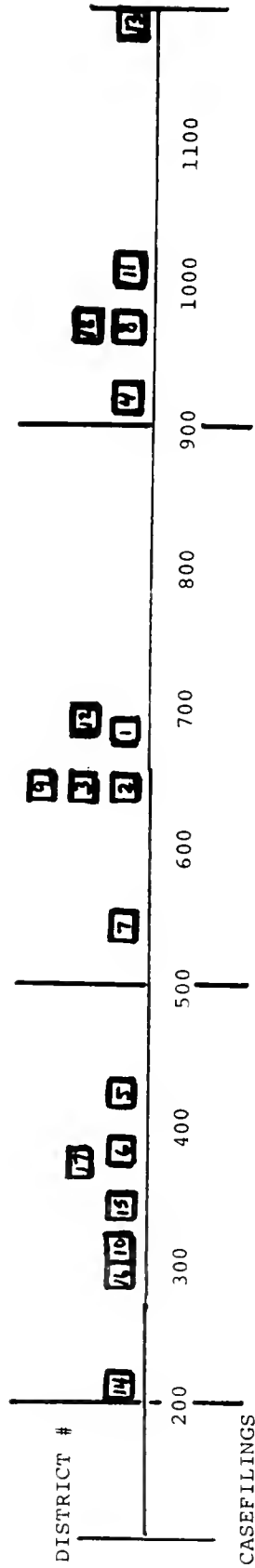
Multi Judge Districts -- 1,2,4,8,11,13,16.

<u>Casefilings</u>	<u>No. Judges</u>
209-354	9
490-643	12
744-989	7

GRAPH 2

CASEFILING CONTINUUM PER JUDGE

1974



Multi Judge Districts -- 1,2,4,8,11,13,16.

<u>Casefilings</u>	<u>No. Judges</u>
218-449	8
569-699	8
934-1,200	12



and 62 percent in District 18. Of these seven districts, two -- Districts 5 and 10 -- cannot be considered to have heavy case-loads. District 5 had 449 casefilings in 1974 and District 10 had 301 -- they simply had fewer casefilings in 1960. Of those districts whose casefilings increased less dramatically, one -- District 8 -- still had over 950 casefilings per judge in 1974. District 8's casefilings were simply equally heavy in 1960. (See Table 6; Graphs 1 and 2.)

Not surprisingly, the districts that have had heavy- or above-average casefilings each contain at least one substantial urban center. These districts -- District 13 (which includes Billings), District 8 (which includes Great Falls), District 4 (which includes Missoula), District 11 (which includes Kalispell), District 1 (which includes Helena), District 2 (which includes Butte), and District 18 (which includes Bozeman) -- all had relatively high caseload - to - population ratios. That is, there were more casefilings per population in these districts than in the others. (See Tables 7 and 8.)

The volume of litigation, as a general rule, will be greatest in areas of high population density. To quote one judicial expert: "It is a simple fact of modern society that 50,000 persons placed in a one square mile plat of an urban environment will produce more litigation than the same number scattered across a rural county -- increased *contacts* produce increased *conflicts*."<sup>54</sup> Montana's judicial experience, as the casefiling and population data show, conforms to this general rule.

One also might anticipate that judges in predominately rural areas travel more miles per year than judges in predominately urban settings. This hypothesis was confirmed, for the most part, by travel data obtained from the office of the court administrator. (See Tables 9, 10, 11, and 12.) The judges (2) in the largest district -- 16 -- ranked second in the number of miles driven in 1975; the judge in the second largest district -- 5 -- ranked third. However, the judges (3) in the fourth largest district -- 4 -- ranked first in miles driven, while the judges in the seventh largest district -- 11 -- ranked fourth. District 4 includes Missoula and District 11 includes Kalispell. District 4 and District 11 ranked third and fourth, respectively, in casefilings in 1974. Thus, the judges in District 4 and 11 have both large caseloads and heavy travel requirements.

Interestingly, casefilings increased far more between 1960 and 1974 than did population between 1960 and 1970. For example, in District 1, casefilings rose by 122 percent, while the population increased by only 16 percent. In District 2, population actually declined, while casefilings increased by 31 percent. Evidently, no direct correlation exists between population and caseload.

However, as a general rule, increases in casefilings will accompany increases in population. Not surprisingly, District 4 (includes Missoula) and District 11 (includes Kalispell) registered the greatest increases in both casefilings and populations (see Table 13).

TABLE 6Percentage Change in Casefilings By District  
1960-1974

<u>District</u>	<u>No. Judges</u>	<u>1960 Casefiling</u>	<u>1974 Casefiling</u>	<u>% Change 1960-1974</u>
1	2	602	1340	+ 122%
2	2	986	1295	+ 31%
3	1	634	640	+ 1%
4	3	1173	2830	+ 138%
5	1	277	449	+ 62%
6	1	343	396	+ 15%
7	1	542	569	+ 4%
8	3	2341	2910	+ 24%
9	1	673	646	- 4%
10	1	207	301	+ 45%
11	2	793	2049	+ 158%
12	1	681	699	+ 2%
13	3	2205	3599	+ 63%
14	1	228	218	- 4%
15	1	305	316	+ 3%
16	2	460	591	+ 28%
17	1	336	374	+ 8%
18	1	595	966	+ 62%
<hr/>				
18	28	12,863	18,931	+ 47%



TABLE 8

## 1970 Judicial District Casefiling to Population Ratio

District	1970 Population	1974 Casefilings	Ratio Caseload to Population
1	35,807	1,340	1:27
2	41,981	1,295	1:32
3	25,049	640	1:39
4	97,168	2,803	1:35
5	18,439	449	1:41
6	14,177	376	1:36
7	25,446	569	1:45
8	88,277	2,910	1:30
9	29,349	646	1:45
10	15,953	301	1:53
11	57,523	2,049	1:28
12	26,444	699	1:38
13	110,205	3,599	1:30
14	9,316	218	1:43
15	19,227	316	1:61
16	30,622	591	1:52
17	16,857	374	1:45
18	32,505	966	1:34
TOTALS			
18	694,345	18,931	1:37

TABLE 9

## District Area, Miles Driven, and Ranks

District	No. Judges	District Area (Sq. Mile)	*Miles Driven 1974	Rank By District Area	Rank by Miles Driven, 1974
1	2	4,669	3,584	15	16
2	2	715	1,184	18	18
3	1	4,809	7,078	14	13
4	3	10,509	28,987	4	1
5	1	10,731	18,631	3	3
6	1	4,466	8,046	16	11
7	1	7,946	12,238	9	9
8	3	6,588	5,809	12	15
9	1	8,851	14,041	6	7
10	1	7,777	12,086	10	10
11	2	8,851	17,003	7	4
12	1	8,631	6,334	8	14
13	3	12,510	13,474	2	8
14	1	6,837	14,500	11	6
15	1	5,522	16,553	13	5
16	2	23,212	24,189	1	2
17	1	10,187	7,458	5	12
18	1	2,517	2,274	17	17

\*These figures were supplied by the Office of Court Administrator from travel claims submitted by the district judges.

\*TABLE 10  
MILES DRIVEN BY DISTRICT  
1974 and 1975

<u>District</u>	<u>1974</u>	<u>1975</u>
1	3,584	5,546
2	1,184	3,234
3	7,078	11,281
4	28,987	28,266
5	18,631	16,325
6	8,046	7,462
7	12,238	11,493
8	5,809	5,530
9	14,041	12,667
10	12,086	16,346
11	17,003	15,596
12	6,334	9,062
13	13,474	10,634
14	14,500	15,632
15	16,553	13,831
16	24,189	23,393
17	7,458	5,956
18	<u>2,274</u>	<u>3,702</u>
TOTALS	<u>213,469</u>	<u>216,496</u>
Average Per District	11,859	12,027

\* These figures were supplied by the Office of Court Administrator from travel claims submitted by the judges.

TABLE 11

## Circuit Mileage of District Judges

<u>District #</u>	<u>* Circuit Mileage</u>	<u>**Farthest Point Mileage</u>
1	64	32
2	-0-	-0-
3	110	55
4	449	147
5	246	96
6	72	36
7	228	79
8	84	42
9	196	97
10	200	100
11	178	89
12	162	81
13	344	137
14	252	126
15	192	96
16 (Judge Martin)	623	200
(Judge Coate )	711	200
17	140	70
18	-0-	-0-

\*Circuit Mileage - is the distance between all county court-houses in a judicial district.

\*\*Farthest Point Mileage - is the distance from the judge's home base to the farthest county courthouse in the judicial district.

Source: The office of Court Administrator, State Capitol, Helena, Montana, 1976.

TABLE 12

## Comparison of Circuit Mileage and Miles Driven

District	No. Judges	Circuit Mileage	Miles Driven 1975	Circuit Mileage Rank	Miles Driven Rank
1	2	64	5,546	16	16
2	2	0	3,234	17*	18
3	1	110	11,281	13	13
4	3	449	28,266	2	1
5	1	246	16,325	5	3
6	1	72	7,462	15	11
7	1	228	11,493	6	9
8	3	84	5,530	14	15
9	1	196	12,667	8	7
10	1	200	16,346	7	10
11	2	178	15,596	10	4
12	1	162	9,062	11	14
13	3	344	10,634	3	8
14	1	252	15,632	4	6
15	1	192	13,831	9	5
16	2	711	23,393	1	2
17	1	140	5,956	12	12
18	1	0	3,702	17*	17

Source: The information in columns 3 and 4 was provided by the Office of the Court Administrator.



TABLE 13

## JUDICIAL DISTRICTS

## Population - Casefiling Changes

District	No. Judges	Dist. Pop. Change 1960-1970	Dist. Casefiling Change 1960-1974
1	2	+16%	+ 122%
2	2	- 9	+ 31
3	1	-12	+ 1
4	3	+21	+ 138
5	1	+10	+ 62
6	1	-13	+ 15
7	1	- 8	+ 4
8	3	+ 9	+ 24
9	1	-14	- 4
10	1	-11	+ 45
11	2	+26	+ 158
12	1	- 9	+ 2
13	3	+ 5	+ 63
14	1	-20	- 4
15	1	-12	+ 3
16	2	- 6	+ 28
17	1	-27	+ 8
18	1	+24	+ 62

TOTALS

+2.9

+ 47

1960 Population 674,767

1970 Population 694,409



The overall increase in Montana population from 1960 to 1970 was 2.9 percent. The overall increase in casefilings from 1960 to 1974 was 47.1 percent.

Several factors probably account for the general rise in cases filed in the district courts since 1960. Population is one. The enactment of many new pieces of legislation is another. Changes in statutes also affect the workloads of the court. In the judges' opinion survey, most respondents stated that new and revised legislation were major influences in the increase in cases filed.

### III

What *firm* conclusions can be drawn from the casefiling statistics about judge workloads? About judicial manpower needs? Very few.

The statistics strongly *suggest* that great inequalities exist in judge workloads. The disparities in the number of cases filed per judge are obvious. In five districts -- Districts 4, 8, 11, 13, and 18 -- the casefilings per judge far exceeded those of the judges in seven other districts -- Districts 5, 6, 10, 14, 15, 16, and 17 (using 1974 casefiling data as a representative year). In the remaining districts -- Districts 1, 2, 3, 7, 9, and 12 -- the casefilings per judge exceeded those of the judges in the latter districts and approached those of the judges in the former.

Caution should be exercised, however, in equating precisely judicial casefilings and judge workloads. One case is not necessarily equal to another in terms of court time, preparation outside of court, hearings in chambers, or in emotional stress. Criminal cases may require more judge time than civil cases, and trials more time than nontrials. Responsibilities related to cases, such as travel time and administration, cannot be neatly quantified. The variations in the way judges work render any equation of workload and caseload imprecise.<sup>55</sup>

The casefiling figures, moreover, did not indicate how many cases a particular judge may have handled because of the disqualification of another judge. Montana law permits litigants a number of judge disqualifications.<sup>56</sup> When a judge is disqualified, another judge is called upon to try the particular case. Allowing for inaccuracies in the survey results and extrapolating for counties that did not report the number of judge disqualifications, it may be reasonable to assume that there were approximately 250 judge disqualifications in 1974 (see Table 14). Although 250 is not a large number, the survey results did not reveal which judges handled the cases resulting from judge disqualifications.

The results of the judges' opinion survey were nearly as inconclusive regarding workload as were the casefiling statistics. The judges were asked, "what is the ideal caseload for a judge?" None of the eighteen respondents answered alike. The responses ranged from 300 per year to over 1,000.

TABLE 14

Judge Disqualifications By District  
1960-1974

District	No. Judges	1960	1964	1970	1974
1	2	38	46	43	35
2	2	Not Available			
3	1	2	3	16	9
4	3	Not Available			
5	1	10	3	18	16
6	1	8	15	9	12
7	1	Not Available			
8	3	36	15	18	7
9	1	4	7	4	4
10	1	2	4	1	4
11	2	Not Available			
12	1	1	1	2	6
13	3	Not Available			
14	1	Not Available			
15	1	0	1	1	0
16	2	5	4	4	7
17	1	9	7	3	3
18	1	4	11	21	7
Totals					
12	16	119	117	140	110

Note: Not available indicates that at least one county in the district did not report the number of judge disqualifications. District judges may be disqualified under sections 93-901, and 95-1709. Judges may also disqualify themselves.

The judges' responses to the question of what factors should be included in a determination of workloads were equally diverse. Some of the disagreement arose from the different environments of the rural and urban judges. Rural judges indicated that travel time should be counted heavily in any workload determination; a few also thought that divorce proceedings, which fill the urban dockets, should be discounted. Urban judges, on the other hand, wanted administrative time given substantial consideration in a workload formula; many of them spend more time on administrative matters than rural judges because there are more judges handling cases in the cities and coordination and consensus building take time. Interestingly, however, all of the judges agreed that the equalization of caseloads should be a consideration in any plan to reapportion the judicial districts.

An important consideration in evaluating judge workloads is the measurement of delay or case backlog. In this regard, the statistical survey and its results were severely lacking.

Moreover, the results of the judges' opinion survey failed to shed much light on the question of delay.<sup>57</sup> Ten of the eighteen judges, who responded to the survey, rated their backlog as minimal; they stated they encountered few problems in keeping their caseloads current. Of the remaining eight judges, only two rated their backlog as serious. The survey, however, had failed to define "backlog" precisely; some judges were uncertain as to what information was desired.

A recent study by the Montana Board of Crime Control concluded that "justice denied because it is delayed is not the problem in Montana that it is in other states."<sup>58</sup> The study covered criminal cases disposed by the eighteen district courts in 1975. Montana, according to the study, is well within the national standard proposed to insure that the constitutional guarantee of a speedy trial is enforced.<sup>59</sup> Relying only upon this study, one might surmise that Montana's judges are not burdened with mounting workloads.

The crime board's study, however, focused naturally upon criminal cases. According to some judicial authorities, *civil* casefilings are a more accurate measurement of actual workload than criminal casefilings. And, furthermore, civil casefilings might be a better indication of actual judge workload than total casefilings, which include probate, as well as criminal matters.<sup>60</sup>

Unfortunately, the survey of judicial statistics failed to provide an accurate portrayal of the breakdown of casefilings. Many of the clerks of court were uncertain as to what information was desired (see Appendix P). In several cases, the survey results were incongruous; civil casefilings were shown as being greater than the total number of all cases filed (see Table 15).

One firm conclusion, nevertheless, emerges from the results of the statistical survey. A critical need exists for the implementation of a systematic and uniform method of reporting judicial

TABLE 15

## \*Civil And Criminal Casefilings, 1960-1974

District	No. Judges	1960		1964		1970		1974	
		Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal
1	2	540	60	680	28	1,033	63	1,227	113
2	2	953	33	971	46	1,023	35	1,241	54
3	1	-	-	-	-	-	-	-	-
4	3	1,066	107	1,396	75	1,738	137	2,427	376
5	1	261	16	262	28	365	27	-	-
6	1	288	55	219	26	251	22	363	33
7	1	-	-	-	-	-	-	-	-
8	3	2,238	103	2,829	127	-	-	2,723	187
9	1	-	-	-	-	-	-	-	-
10	1	-	-	-	-	-	-	-	-
11	2	730	63	984	79	1,549	115	1,856	193
12	1	621	60	529	57	474	50	636	63
13	3	-	-	-	-	-	-	-	-
14	1	198	30	186	22	185	9	198	20
15	1	-	-	-	-	-	-	-	-
16	2	407	53	428	70	444	51	481	110
17	1	-	-	-	-	-	-	-	-
18	1	525	70	589	32	734	64	865	101
Totals		7,827	650	9,073	590	7,796	573	12,017	1,250

\* Blanks indicate that inaccuracies were found in the survey results.

data in Montana. Without data that are gathered and analyzed on a continuous basis, it will be difficult to judge accurately the performance of the judges. It will also be difficult to determine judicial manpower needs.

#### IV

Any effort to restructure or expand Montana's judicial districts -- to rectify the vast inequities among the districts -- should involve consideration of a number of variables. Demography, typography, caseload data, judge travel obligations, transportation facilities, financial costs, courtroom facilities, and constitutional requirements -- all constitute criteria for determining an efficient and effective judicial district structure.

Employed separately, these criteria are of limited value. For instance, the population method, by which the number of judges is determined according to a ratio of one judge for X number of persons, has advantages: it is inexpensive; it operates automatically; it provides for increases in judgeships outside of the political arena; and it is easily understood by the citizenry.

The population method, however, raises some difficult questions. Upon what basis is a judge-to-population ratio determined? Is there a relationship between population and judge workload? No available evidence proves conclusively that a given increase in population will produce a given increase in judicial caseload. A more significant indicator is population density, which the simple population method ignores. Research in other states, moreover, suggests that an urban judge, because of experience, pressure, and limited travel obligations, can dispose of more cases than his rural counterpart -- a consideration not usually addressed in the population method.<sup>61</sup>

In Montana the population per judge ranges widely, from 36,735 in District 13 to 9,316 in District 14. If Montana's present twenty-eight judges were apportioned on the basis of population, each judge would serve 25,790 persons. Twelve judges serve from 9,316 to 20,990 persons, while eleven other judges serve from 29,500 to 36,700 (see Table 1). Whatever the questions posed by the population method, the disparity in per-judge populations obviously is great and would need to be addressed in any proposal for redistricting. (Population also bears directly upon per capita court costs. See the section on state financing of court operations.)

A combination criterion of population and caseload presents perhaps the best method for devising a redistricting plan for Montana, given the status of judicial data in the state. In Iowa, for example, districts with at least one city of 50,000 or more are allotted one judgeship per 550 casefilings and 40,000 in total population. In districts without a major city, one judgeship is allotted for every 450 casefilings and 40,000 population. The Iowa formula -- population and casefilings -- takes into account

the fact that rural judges travel more than urban judges and, thus, are able to dispose of fewer cases than their city colleagues.

Whatever method might be devised to reapportion the judicial districts, the factors that affect judicial workloads ought to be considered in the aggregate. Moreover, new judgeships obviously cannot be allotted to districts that do not possess adequate courtroom facilities. Finally, the cost of adding one trial judge to the Montana judiciary is approximately \$30,000, which includes salary, travel expenses, and fringe benefits.



*No business or other  
governmental department  
can operate efficiently  
without an administrative  
head. Neither can a court  
system.*  
William J. Brennan, Jr.

## COURT ADMINISTRATION

The Constitution of the state of Montana rests in the Supreme Court "general supervisory control over all other courts." The Supreme Court "may make rules governing appellate procedure, practice and procedure for all other courts" subject "to disapproval by the legislature in either of the two sessions following promulgation."<sup>62</sup>

In October, 1975, the Montana Supreme Court established the Office of Court Administrator. The court hired a court administrator and an assistant. The court administrator's duties include preparing judicial branch budget requests for presentation to the legislature; assisting individual judges with various tasks; auditing judge travel claims; inventorying facilities; collecting and analyzing judicial data; serving as administrative assistant to the Chief Justice; and preparing internal operating rules for the court's approval (See Appendix C).

The funding for the Office of Court Administrator was provided by the Law Enforcement Assistance Administration (LEAA) in the United States Department of Justice. This funding is not continuous.

Prior to the creation of the Office of Court Administrator, virtually no supervision or central administration of the trial courts existed in Montana. The lack of resources and time available to the justices of the Supreme Court severely limited that court's supervisory power.

The twenty-eight trial judges in Montana operated and maintained, in effect, twenty-eight separate judicial systems. Little uniformity existed - and little now exists - in the operation of the district courts. Although the state funds the salaries and travel expenses of the judges, the judges in each district must submit to the county commissioners in each county within their district requests for all other expenses. Record-keeping procedures and the gathering of statistical data are left to the discretion of the clerks of court in each county. No accurate and complete statistical base has been developed from which to evaluate the operation and performance of the trial courts. The trial courts have not been held systematically accountable for the work they perform.

It is frequently argued that the judges are held accountable for their performance by the electorate. In a very limited sense

this is true. However, as most judicial authorities note, and as several Montana district judges have stated, the voting public is generally unaware of the operations of the trial courts.<sup>63</sup> Furthermore, if no single individual or agency in Montana is aware of the nature and extent of the workloads of the judges, how is it that the public would be?

## II

If the efficient administration of justice is a worthy goal, the need for some kind of central administration of the trial courts is evident. The glaring lack of sound judicial data is but one symptom of that need. A repository of statistics would have aided immeasurably legislative changes in the district court structure in the past. For the future, such a repository is imperative.

Central administration of the district courts would also relieve the trial judges of unnecessary administrative tasks, thus allowing them more time to perform their central role -- that of judging. During the subcommittee's first public hearing, the Chief Justice of the Montana Supreme Court noted that many trial judges spend a seemingly inordinate amount of time on administrative tasks. Referring to the 1974 Anzjon-Zion study, the Chief Justice stated that a judge works an average of 19 1/2 days per month - of those 19 1/2 days, six are devoted to administrative work. Only 2 1/2 days are spent presiding over trials.<sup>64</sup>

The Anzjon-Zion study did not separate "pure administration" from other administrative concerns, such as those relating to the signing of judicial orders. However, the study did show that a district court judge has little time for continuing education and for legal research.<sup>65</sup>

During the subcommittee's public hearing the Chief Justice announced his intention to hire a court administrator. He also proposed an administrative remedy for the lack of supervision now exercised over the trial courts.

The Chief Justice suggested the creation of eight administrative districts (see Appendix D). The present judicial districts would be unchanged. For administrative purposes, however, the eighteen judicial districts would be grouped into eight administrative districts, with each district headed by a chief judge. Among other items, the chief judge would be responsible for seeing that court calendars do not become congested and for shifting a judge from one district to another within his administrative sphere when a caseload situation warranted it. Such shifts would be temporary and only for the purpose of assisting a district with a momentarily heavy caseload or for the purpose of providing assistance in the case of a judge disqualification.<sup>66</sup>

Administrative districts or regions for the trial courts have been employed with success in many states. According to one study,

judicial regions allow cases to be moved throughout the region as workloads demand and, thus, to be heard readily.<sup>67</sup>

The trial judges present at the hearing objected to the concept of administrative districts. They envisioned difficulties in the selection of a chief judge for each district. Moreover, they feared that the development of administrative districts would work to remove control of judicial calendars from the judges.

The Chief Justice responded, however, that the intent of his proposal was not control of judge calendars. Rather, this proposal aimed at providing a mechanism whereby congested courts could receive assistance.<sup>68</sup>

The Chief Justice of the Supreme Court already has the authority to shift a judge temporarily from one district to another. Article VII, Section 6(3) of the constitution states, "the chief justice may, upon request of the district judges, assign district judges and other judges for temporary service from one district to another, and from one county to another."

The Chief Justice also has the authority to ask a retired judge to assist any district court on a temporary basis. Section 93-1130, R.C.M. 1947, states in part: "Every judge ... receiving retirement pay ... shall ... be subject to call by the ... chief justice ... to aid and assist ... any district court under such directions as the supreme court may give."

The Chief Justice and most district judges agreed, during the course of the subcommittee's study, that a court administrator was needed. They agreed that a real need exists to implement a uniform reporting and statistic - gathering system. The district judges hoped, however, that a court administrator would not be involved in juggling judge calendars.

### III

Forty-nine states now have court administrators. Most states have established the Office of Court Administrator by statute.

The duties of court administrators vary from state to state. Generally a court administrator is appointed by the state Supreme Court and serves at the pleasure of the court. He or she is usually responsible for preparing budgets, establishing uniform personnel policies and procedures that govern nonjudicial employees of the court, administering the courts' fiscal and procurement business, acting as a liaison between the courts and other government agencies, gathering and analyzing judicial data, and such other tasks as might be assigned by the Supreme Court.<sup>69</sup>

In short, the court administrator is the judicial system's business manager. A court administrator can contribute greatly to a more efficiently managed judiciary. Administrative procedures can be

unified, duplication of effort eliminated, problems analyzed, and solutions proposed.

In Montana, the court administrator is not a creature of the statutes. Whether a court administrator should be recognized statutorily is, of course, the decision of the legislature. That a court administrator is needed, however, is not doubted by those who value increased judicial efficiency.

*Those who control the purse  
can affect administration, and  
when so many local bodies are  
involved in court financing,  
effective central administration  
is not possible.*

- Jack B. Weinstein

5

## STATE FINANCING OF THE TRIAL COURTS

In Montana, the state finances district judge salaries and travel expenses.<sup>70</sup> The counties fund all other expenses incurred in district court operations. County expenditures for district court functions include: clerical help; the salaries of clerks of court, deputy clerks, and court reporters; fees for extra help and special counsels; juror expenses; office supplies; law libraries; and capitol improvements to courthouses.<sup>71</sup>

District judge salaries and travel expenses are established by state statute.<sup>72</sup> To fund the county share of district court expenditures a judge establishes his budget and "orders" the county commissioners in each county within his district to provide the funds.

The power of the court "to order" payment of judicial expenses is codified in the Montana statutes. Section 93-501, R.C.M. 1947, states that a district judge can order a county sheriff to provide all equipment, supplies, etc., necessary for the transaction of court business when the county commissioners have not so provided. A district judge, for example, can order the payment of expenses for a secretary and a law clerk. Most judges, however, prefer to cooperate with the county commissioners in establishing judicial appropriations.<sup>73</sup> Other demands upon the county treasury are usually taken into account.

The state and the counties, thus, each assume a portion of district court costs. The state and the local government portions of court expenses, however, are not equal.

For example, district court expenditures for fiscal year 1974-1975 totaled \$3,025,744. Of that amount, the counties paid \$2,188,534, or 73 percent of the total.<sup>74</sup> The state, on the other hand, appropriated \$837,612 or 27 percent of the total (see Tables 16 and 18).<sup>75</sup>

Nor is the amount the counties provide for district court expenses divided evenly. In District 13, for example, the residents of Treasure County paid 442 percent more per person for court operations in fiscal year 1974-1975 than the residents of Big Horn. Yet, Big Horn County had ten times the caseload of Treasure County in 1974. Total court expenses for Big Horn were only 2.25 times that of Treasure County (see Tables 16 and 17).

District 13 is not an isolated example. In eight other judicial districts, the residents of one or more of the counties within

TABLE 16

DISTRICT COURT EXPENDITURES, 1974:  
PER CAPITA COSTS BY DISTRICT AND BY COUNTY

<u>DISTRICT</u>	<u>COUNTY</u>	<u>**POPULATION</u>	<u>DOLLAR EXPENDITURES</u>	<u>PER CAPITA</u>
1.	Broadwater	2,700	14,900	5.52
	Lewis & Clark	35,500	120,160	3.38
	TOTAL	<u>38,200</u>	<u>135,060</u>	*3.54
2.	Silver Bow	<u>42,200</u>	<u>144,281</u>	3.42
3.	Powell	6,800	26,564	3.91
	Granite	2,600	15,847	6.10
	Deer Lodge	15,800	34,575	2.19
	TOTAL	<u>25,200</u>	<u>76,986</u>	*3.06
4.	Lake	15,600	32,715	2.10
	Mineral	3,300	14,710	4.46
	Missoula	61,200	119,238	1.95
	Ravalli	16,900	30,695	1.82
	Sanders	7,400	16,762	2.27
	TOTAL	<u>104,400</u>	<u>214,120</u>	*2.05
5.	Beaverhead	8,000	41,566	5.20
	Jefferson	6,700	30,358	4.53
	Madison	2,800	24,991	8.93
	TOTAL	<u>17,500</u>	<u>96,915</u>	*5.54
6.	Park	11,800	41,419	3.51
	Sweet Grass	3,000	17,256	5.75
	TOTAL	<u>14,800</u>	<u>58,675</u>	*3.96
7.	Dawson	10,900	28,501	2.61
	McCone	5,600	16,373	2.92
	Richland	9,700	30,433	3.14
	Wibaux	1,400	13,957	9.97
	TOTAL	<u>27,600</u>	<u>89,264</u>	*3.23
8.	Cascade	83,700	174,248	2.08
	Chouteau	5,900	25,847	4.38
	TOTAL	<u>89,600</u>	<u>200,095</u>	*2.23

TABLE 16 (Cont'd)

<u>DISTRICT</u>	<u>COUNTY</u>	<u>**POPULATION</u>	<u>DOLLAR EXPENDITURES</u>	<u>PER CAPITA</u>
9.	Glacier	11,400	28,931	2.54
	Pondera	7,200	29,087	4.04
	Teton	6,600	24,646	3.73
	Toole	5,500	26,360	4.79
	TOTAL	<u>30,700</u>	<u>109,024</u>	*3.55
10.	Fergus	12,700	33,389	2.63
	Judith Basin	2,600	13,482	5.19
	Petroleum	600	5,601	9.34
	TOTAL	<u>15,900</u>	<u>52,472</u>	*3.30
11.	Flathead	40,600	144,877	3.57
	Lincoln	17,700	49,332	2.79
	TOTAL	<u>58,300</u>	<u>194,209</u>	*3.33
12.	Blaine	6,800	28,237	4.15
	Hill	17,600	41,517	2.36
	Liberty	2,500	14,655	5.86
	TOTAL	<u>26,900</u>	<u>84,409</u>	*3.14
13.	Big Horn	11,100	18,693	1.68
	Carbon	7,800	21,512	2.76
	Treasure	1,100	8,189	7.44
	Stillwater	4,800	13,025	2.71
	Yellowstone	92,300	207,311	2.25
	TOTAL	<u>117,100</u>	<u>268,730</u>	*2.20
14.	Meagher	2,200	15,641	7.11
	Golden Valley	1,000	8,479	8.48
	Wheatland	2,500	14,722	5.89
	Musselshell	4,100	25,948	6.33
	TOTAL	<u>9,800</u>	<u>64,790</u>	*6.61
15.	Daniels	3,100	10,804	3.49
	Roosevelt	10,000	27,732	2.77
	Sheridan	5,500	21,322	3.88
	TOTAL	<u>18,600</u>	<u>59,858</u>	*3.22
16.	Carter	1,800	17,186	9.55
	Custer	11,300	46,329	4.10
	Fallon	3,800	21,601	5.68
	Garfield	1,800	10,632	5.91

TABLE 16 (Cont'd)

<u>DISTRICT</u>	<u>COUNTY</u>	<u>**POPULATION</u>	<u>DOLLAR EXPENDITURES</u>	<u>PER CAPITA</u>
16. (Cont.)	Powder River	2,100	20,029	9.54
	Prairie	2,000	9,877	4.94
	Rosebud	6,600	35,847	5.43
	TOTAL	<u>29,400</u>	<u>161,501</u>	*5.49
17.	Phillips	5,200	21,845	4.20
	Valley	13,300	47,284	3.56
	TOTAL	<u>18,500</u>	<u>69,129</u>	*3.74
18.	Gallatin	<u>35,800</u>	<u>109,017</u>	* 3.05
<hr/>				State Average
TOTALS				
18	56	720,500	2,188,535	3.04

\*Per Capita Average

\*\*1974 Estimates

Source: State Commission on Local Government



TABLE 17

DISTRICT COURT EXPENDITURES, 1974:  
PER CAPITA COSTS BY COUNTY

<u>County</u>	<u>Per Capita Cost</u>	<u>County</u>	<u>Per Capita Cost</u>
Wibaux	9.97	Powell	3.91
Carter	9.55	Sheridan	3.88
Powder River	9.54	Teton	3.73
Petroleum	9.34	Flathead	3.57
Madison	8.93	Valley	3.56
Golden Valley	8.48	Park	3.51
Treasure	7.44	Daniels	3.49
Meagher	7.11	Silver Bow	3.42
Musselshell	6.33	Lewis & Clark	3.38
Granite	6.10	Richland	3.14
Garfield	5.91		
Wheatland	5.89	Gallatin	3.05
Liberty	5.86	McCone	2.92
Sweet Grass	5.57	Lincoln	2.79
Fallon	5.68	Roosevelt	2.77
Broadwater	5.52	Carbon	2.76
Rosebud	5.43	Stillwater	2.71
Beaverhead	5.20	Fergus	2.63
Judith Basin	5.19	Dawson	2.61
Prairie	4.94	Glacier	2.54
Toole	4.79	Hill	2.36
Jefferson	4.53	Sanders	2.27
Mineral	4.46	Yellowstone	2.25
Chouteau	4.38	Deer Lodge	2.19
Phillips	4.20	Lake	2.10
Blaine	4.15	Cascade	2.08
Custer	4.10	Missoula	1.95
Pondera	4.04	Ravalli	1.82
		Big Horn	1.68

State Average 3.04

Sources: State Commission on Local Government; Office of the Court Administrator.



each district paid 100 to 300 percent more per person than the residents of the other counties.

The range in per capita costs by county is even more astounding. The residents of Wibaux, for example, paid 590 percent more for district court operations in 1974 than the residents of Big Horn, Ravalli, and Missoula counties.

The average per capital cost for district court operations was \$3.04 in 1974. In thirty-eight of the fifty-six counties, the per capita cost exceeded the statewide average. In ten of those thirty-eight counties, the per capita cost exceeded the statewide average by 100 to 300 percent (see Tables 16 and 17).

Of the thirty-eight counties in which percapita court costs exceeded the statewide average, only three can be classified as urban areas (Flathead, Lewis and Clark, and Silver Bow). The vast majority are counties with predominately rural populations (see Table 17).

The residents in the counties with the heaviest casefilings, moreover, paid far less per person for district court expenses than the statewide average. In Yellowstone, Missoula, and Cascade counties, per capita court costs were 75 to 50 percent less than the statewide average. Thus, on a per capita basis, the residents of counties in which casefilings were "low" paid more for court services than the residents of counties in which casefilings were "high".

## II

Several arguments have recently been advanced in favor of full state assumption of district court expenditures.<sup>76</sup> Proponents of state assumption of district court funding note that district courts are state courts, not county courts. Thus, the costs of operating them should be shared equally by all citizens. State level funding would correct the imbalances that now exist in per capita court expenditures.

Variations in local levels of court financing, proponents further contend, produce wide disparities in the performance of the courts. Judicial districts composed of counties with more well-to-do residents can afford better law libraries and courtroom facilities, both of which bear upon the efficient administration of justice. This argument assumes that the state has a responsibility to assure statewide consistency in court operations. (Local property taxes now fund the major share of court expenses in Montana. Among the counties, appropriations for law libraries ranged from zero to \$8,000 in 1974.)

Centralizing court budget procedures, proponents further argue, would increase significantly the efficient administration of the judiciary. The primary role of a judge is judging: State assumption of court financing would relieve judges of the burden of

TABLE 18

STATE GENERAL FUND APPROPRIATIONS  
FOR THE DISTRICT COURTS  
Fiscal Year 1973-1977

Category	1973	1974	1975	1976	1977
Personnel Services (Judge salaries and fringe benefits)	\$644,085	\$634,915	\$787,604	\$799,360	\$799,360
Operating Expenses (Travel and lodging)	\$ 44,335	\$ 47,361	\$ 49,612	\$ 62,768	\$ 62,768
TOTALS	\$688,418	\$682,276	\$837,216	\$862,128	\$862,128

fiscal management. No longer would judges need to deal directly with the county commissioners in each county within their district in order to obtain funds for court operations. Instead, the district judges would deal with the Supreme Court, the court administrator, or some other agency, which in turn would deal with the legislature. Time and efficiency now lost in the fragmented budget process would then be available to the judges for judging. Finally, like all other state departments, the judiciary would come under strict and uniform accounting procedures.

The opponents of full state financing of district court operations have two primary objections.<sup>78</sup> One, they contend that full state court funding would reduce, if not eliminate, court responsiveness to local governments. This argument assumes, of course, that the district courts are essentially a local government function; that responsiveness to local desires is good even if it results "in the uneven and inequitable application of the law between jurisdictions" and that the district courts are, in fact, now responsive to local government desires.

Two, the opponents of state court financing argue that the shift of budget responsibility to the state would result in the creation of another "bureaucracy". Moreover, a state bureaucracy would lack the flexibility in appropriating funds that a judge now possesses by his authority to order a county to pay an expense.

### III

Nationally, the transfer of major responsibility for court financing from county commissioners to state legislatures has been limited.<sup>79</sup> As of 1972, only seven states had adopted unitary budgeting -- total state assumption of the costs of all court operations.<sup>80</sup>

However, seventeen states do finance the entire cost of their intermediate appellate courts, the equivalent of Montana's district courts.<sup>81</sup> (Tables 19 and 20 show the percentages of state and local court expenditures in the United States.)

In Montana, no recent opposition has surfaced to state assumption of lower court expenditures. In fact, several associations and agencies have endorsed the concept, and others are studying it.<sup>82</sup> The Subcommittee on Judiciary agreed that state funding of the trial courts deserves consideration. The subcommittee, however, questioned state funding of capital projects, such as courtrooms and courthouses. This aspect of financing, the subcommittee said, should be left to the counties.<sup>83</sup>

The State Commission on Local Government evidently will propose to the next legislature that the state assume the costs of all lower court operations.

The cost to the state general fund for *district court* expenses, excluding capital projects, would be between \$3,000,000 and

\$3,500,000 per annum. A more comprehensive fiscal analysis of court expenditures must await the report of the State Commission on Local Government.

**Judicial Expenditures Funded by State Rather than Local Governments  
Shown as Percentages of Total Judicial Expenditures.**

STATE	YEAR				CHANGE 1968-72
	1968-69	1969-70	1970-71	1971-72	
Alabama	22.8	24.1	25.4	28.3	+ 5.5
Alaska	92.9	94.2	96.4	97.0	+ 4.1
Arizona	12.4	14.0	13.3	13.5	+ 1.1
Arkansas	46.9	39.9	38.0	32.6	-14.3
California	13.4	12.0	10.9	11.5	- 1.9
Colorado	16.8	55.8	69.5	73.7	+56.9
Connecticut	99.3	99.8	99.9	100.2*	+ 0.9
Delaware	67.8	78.2	81.1	79.9	+12.1
Florida	17.9	17.6	16.7	17.8	- 0.1
Georgia	17.3	22.7	15.3	15.4	- 1.9
Hawaii	99.8	100.0	100.0	100.0	+ 0.2
Idaho	56.5	57.4	49.5	56.4	- 0.1
Illinois	33.1	35.0	32.9	32.4	- 0.7
Indiana	19.3	22.6	21.4	24.7	+ 5.4
Iowa	24.0	23.1	22.9	28.4	+ 4.4
Kansas	28.9	36.0	31.2	31.6	+ 2.7
Kentucky	71.5	66.0	53.2	51.0	-20.5
Louisiana	35.3	33.6	28.2	24.3	-11.0
Maine	55.8	64.1	61.2	62.2	+ 6.4
Maryland	40.5	47.6	48.2	61.7	+21.2
Massachusetts	22.4	14.9	17.5	19.4	- 3.0
Michigan	17.0	19.0	15.9	18.8	+ 1.8
Minnesota	21.1	18.8	17.5	18.3	- 2.8
Mississippi	27.4	27.5	31.9	36.0	+ 8.6
Missouri	33.6	33.6	32.7	31.3	- 2.3
Montana	29.2	28.6	30.0	28.7	- 0.5
Nebraska	40.4	30.4	28.3	27.7	-12.7
Nevada	17.0	25.5	25.3	25.8	+ 8.8
New Hampshire	50.9	38.7	40.4	30.7	-20.2
New Jersey	24.5	24.8	24.7	22.8	- 1.7
New Mexico	46.5	84.3	84.1	87.1	+40.6
New York	20.3	21.8	21.2	20.7	+ 0.4
North Carolina	91.4	85.2	88.5	91.7	+ 0.3
North Dakota	24.9	27.7	27.2	29.2	+ 4.3
Ohio	12.9	13.9	12.9	13.1	+ 0.2
Oklahoma	44.4	53.2	38.6	53.6	+ 9.2
Oregon	26.8	29.9	27.0	26.5	- 0.3
Pennsylvania	16.2	22.0	22.2	30.6	+14.4
Rhode Island	99.5	96.1	96.4	97.9	- 1.6
South Carolina	18.0	17.9	14.9	13.4	- 4.6
South Dakota	25.2	28.4	29.6	27.5	+ 2.3
Tennessee	25.9	19.5	21.4	21.7	- 4.2
Texas	18.8	20.5	18.4	20.7	+ 1.9
Utah	57.0	51.7	50.2	45.7	-11.3
Vermont	100.0	99.9	98.6	94.9	- 5.1
Virginia	47.2	46.6	48.5	46.3	- 0.9
Washington	16.9	19.9	17.7	17.6	+ 0.7
West Virginia	41.5	38.0	33.0	37.9	- 3.6
Wisconsin	30.9	33.3	34.2	32.9	+ 2.0
Wyoming	36.0	42.4	47.1	42.0	+ 6.0
U.S. AVERAGE	26.3	27.6	26.7	28.3	+ 2.0

Notes: Years represent expenditures from July 1 to June 30.

\*Connecticut state expenditures exceed 100% in 1971-72 because of inclusion of certain transfer payments from state to local government.

Sources: Percentages are derived from dollar amounts for "Judicial activities" in *Expenditure and Employment Data for the Criminal Justice System*, issued annually by the Law Enforcement Assistance Administration and the Bureau of the Census. Each report appears approximately 18-24 months following the close of each fiscal year. The judicial data appear in Table 5 for 1968-69 and 1969-70 and Table 6 in 1970-71 and 1971-72. State-local breakdowns were first reported in 1968-69.

From: Carl Baar, "The Limited Trend Toward State Court Financing," *Judicature*, 58 (Feb., 1975), p. 325.

TABLE 20

STATE-LOCAL SHARING OF COURT EXPENDITURES, 1968-1969<sup>a</sup>

0-20%	21-40%	41-60%	61-80%	81-100%
Arizona (12)	Alabama (23)	Arkansas (47)	Delaware (68)	Alaska (93)
California (13)	Illinois (33)	Idaho (57)	Kentucky (72)	Connecticut (99)
Colorado (17) <sup>b</sup>	Iowa (24)	Maine (56)		Hawaii (99)
Florida (18)	Kansas (29)	New Hampshire (51)		North Carolina (91)
Georgia (17)	Louisiana (35)	New Mexico (47)		Rhode Island (99)
Indiana (19)	Maryland (40)	Oklahoma (44)		Vermont (100)
Michigan (17)	Massachusetts (22)	Utah (57)		
Nevada (17)	Minnesota (21)	Virginia (47)		
New York (20)	Mississippi (27)	West Virginia (42)		
Ohio (13)	Missouri (34)			
Pennsylvania (16)	Montana (29)			
South Carolina (18)	Nebraska (40)			
Texas (19)	New Jersey (34)			
Washington (17)	North Dakota (25)			
	Oregon (27)			
	South Dakota (25)			
	Tennessee (26)			
	Wisconsin (31)			
	Wyoming (36)			
14 States	19 States	9 States	2 States	6 States

<sup>a</sup>Numbers in parentheses indicate state percent of State-local court expenditures.

<sup>b</sup>Colorado assumed full State financing of its court system in 1970.

Source: Advisory Commission on Intergovernmental Relations, State-Local Relations in The Criminal Justice System, Report A-38 (Washington: U.S. Government Printing Office, 1971), p. 108.

From: Sandra R. Muckelston, The Judiciary (Constitutional Convention Study 14, Helena, Montana, 1972), p. 111.



*Other branches and departments of government ... have found that they cannot operate effectively without adequate and competent staff; there is no reason to believe a judicial system is any different.*

- Edward B. McConnell

*The judiciary is the only great agency of government which is habitually given no control of its clerical force.*

- Roscoe Pound

## 6

## NONJUDICIAL COURT PERSONNEL

Nonjudicial court personnel are those persons who are not judges but who perform court-related tasks. Nonjudicial court personnel include law clerks, court reporters, clerks of court, judges' secretaries, prosecutors, public defenders, probation officers, and bailiffs. Of these officers, four -- the law clerk, the court reporter, the clerk of court, and the judge's secretary -- are most directly involved in supporting the daily work of the judge. It is these officers that are considered below.

## II

*Law clerks* perform a variety of tasks for a judge. Their principal task is in providing research assistance.

The vast majority of trial court judges in Montana do *not* have law clerks. Nor do they have immediate access to research assistance, except that of the local law library.

The Montana Board of Crime Control, through LEAA grants, provides some funding for legal interns. In 1975, for example, MBCC funded three summer law interns for work in three judicial districts.<sup>84</sup> MBCC funds for legal interns, however, are limited. Apparently the availability of these funds from LEAA is declining. Moreover, the funding for interns has never extended beyond the summer months.

District judges (and prosecutors and public defenders) have expressed a need for law clerks. Sixteen of the eighteen judges, or 88 percent, who responded to the judges' opinion survey, indicated that they favored state funding of law clerks. At least six district judges recently requested funds to hire law clerks from MBCC.

During the subcommittee's first public hearing, Judge Gordon Bennett supported the concept of law clerks for district judges.

He stated that he and Judge Peter Meloy (the First Judicial District) probably could present a good case to the legislature for the addition of another judge to District 1. He stated, however, that if he and Judge Meloy were each provided with a law clerk to assist in legal research, an additional judge might not be necessary.<sup>85</sup>

At the same hearing, Chief Justice Harrison also argued in favor of providing district judges with law clerks. He noted that when he assumed his position on the Supreme Court the court had a backlog of 193 cases. With legislative consent, he immediately added five law clerks to the court's staff. In three-and-one-half years the court successfully cleared its docket of the backlog of cases.<sup>86</sup>

Law clerks can provide valuable research assistance to a judge. In some districts, the addition of a law clerk might be more appropriate than the addition of another judge. Law clerks can provide a judge with more time to judge and, thus, contribute to the efficient use of judicial resources. Law clerks, moreover, require less additional administrative time, according to one judge, than any other alternative presented to assist judges with heavy caseloads.<sup>87</sup> (The salary of a law clerk would be between \$12,000 and \$15,000.)

Law clerks, however, would be of little value in areas that lacked adequate research facilities. The law libraries in some districts probably could not sustain a full-time researcher.

Furthermore, some judges have stated that they do not have a need for a law clerk.<sup>88</sup> They noted that their court reporters and clerks of court adequately fulfill their needs for research assistance.

The subject of legal research assistance for the district judges probably requires further study. What criteria should be applied to determine the need for such assistance? Which judges and how many of them can demonstrate a need for law clerks? How should law clerks be funded? Through the county commissioners? An appropriation to the Supreme Court?

The Montana Board of Crime Control presently is studying ways in which legal research assistance can be provided to lawyers, prosecutors, public defenders, and judges. One of the areas the MCBB has addressed is that of a centralized research source involving computer technology. As of this writing, MBCC is still exploring several possibilities.

### III

A few judges in the urban districts employ *personal secretaries* who are paid from county funds. To obtain a secretary, a district judge must convince the county commissioners that one is needed. Most district judges do not have secretaries.

The questions posed above regarding law clerks also apply to judges' secretaries. Some judges have evinced a need for a secretary. Others have not. Moreover, whether a judge would prefer state rather than county funding of a secretary is questionable. Secretaries now employed by some judges may be receiving a greater salary from the county than the state would provide.

#### IV

Each district judge appoints his own *court reporter*.<sup>89</sup> A court reporter is required, under the direction of the judge, to attend all sittings of the court, and to take full stenographic notes of the testimony given.<sup>90</sup> In many districts, a court reporter serves as the judge's administrative assistant, secretary, and general factotum.<sup>91</sup> However, a court reporter is not required to perform tasks other than those stipulated by statute -- but he holds his position at the pleasure of the judge.<sup>92</sup>

The funding of the position of court reporter is strangely bifurcated. The salary level of the court reporter is set by state statute. However, the court reporter's salary is paid by the counties that comprise the district within which he works. Each county pays a portion of the court reporter's salary based upon the number of cases filed in the county in the preceding year.<sup>93</sup>

Two steps, therefore, must be performed before a court reporter is paid. First, the legislature establishes the salary level -- to receive a raise, the court reporters must lobby the legislature. Second, the district judge must, "on the first day of January of each year," apportion the amount of the court reporter's salary "to be paid by each county in his district on the basis" of "the number of civil and criminal actions entered and commenced in the district courts of such counties respectively in the preceding year."<sup>94</sup> Incidentally, but not inconsequentially, a court reporter's travel expenses are paid in the same manner as his salary.<sup>95</sup>

State assumption of the salaries and travel expenses of court reporters would seem to have obvious advantages. Court reporters would not have to lobby the legislature each biennium for a salary increase; the position of court reporter would be included in the state pay and classification plan. Court reporters' salaries would not be apportioned according to the cases filed in the counties; if casefilings are, in fact, a poor indicator of judicial workload, as some judges have contended, they must likewise be a poor way of determining what portion each county pays of a court reporter's salary. Finally, the district judges would be relieved of the administrative burden of apportioning the court reporter's salary and travel expenses among the counties in his district.

Court reporters presently may receive a salary between \$12,500 and \$16,000.<sup>96</sup> The appointing judge determines the exact amount. The cost to the state general fund of the salaries and travel expenses

of twenty-eight court reporters would be between \$400,000 and \$500,000 per year.

V

A *clerk of district court* is now elected in each county and is required to reside at the county seat.<sup>97</sup>

The salary of the clerk of district court is established by the county commissioners according to a schedule based on the population and taxable valuation of the county.<sup>98</sup> The clerk's duties are prescribed by law.<sup>99</sup>

The clerk of district court is independent of the judiciary. As an elected official, the clerk is responsible to the voters, not to the district judge. Moreover, nothing in the statute that defines the clerk's duties provides for administrative control of the clerk by the district judge.<sup>100</sup> In some districts, the clerks and the judges have a close working relationship; in others, not.<sup>101</sup>

The independence of the clerk of court from judicial control has received wide criticism in judicial literature. Thirty-five years ago, Roscoe Pound, the venerable sage of court reform, stated that:

Emancipating the clerical work of the courts from politics and patronage and putting control of it where it ought to be, namely, in the courts themselves, must be an important item in any program of improving the administration of justice. To specify but one item, the system, or rather want of system, which prevails generally is a prolific source of needless expense in the courts . . . Decentralization of courts was carried so far in the last century that the clerks were made independent functionaries, not only by legislative provisions and limitation. No one was charged with supervision of this part of the work of the courts. It was no one's business to look at it as a whole, seek to find how to make it more effective, and to obviate waste and expense, and promote improvement. There is much unnecessary duplication, copying and recopying, and general prolixity of records in the great majority of our courts. In the clerical no less than on the judicial side, most of court courts are like Artemus Ward's proposed military company in which every man was to be an officer and the superior of every other. *The judiciary is the only great agency of government which is habitually given no control of its clerical force.* Even the pettiest agency has much more control than the average state court. But scientific management

is needed in a modern court no less than in a modern factory. With no one responsible, there is no incentive to progress in the clerk's office.

Much that could be done to reduce costs in litigation and the expense of operating the courts remains undone because it is no one's business to see it done, and also, one cannot deny, because court houses, as distinguished from courts, are likely to be deep in politics, and reorganization of the clerical work might interfere with patronage. Organization, control, simplification, and general improvement are demanded here no less than in the judicial business of the courts. It is becoming especially important to reduce the cost of the courts so far as it can be done consistently with making them as efficient as we can succeed in making them. Today there are many new claims pressing upon government which made little demand in the days when preserving order and administering justice were held the main, if not the sole, task of politically organized society. Many competing ends of government make increasing drains upon public revenue. The established institutions of the past can maintain their claims to appropriations, in the face of this competition, only if they use to the best advantage the money appropriated to them. The courts cannot so use it as they are organized today. So long as the administrative officers of importance are elected independently, have sole control of their offices, and are responsible only to the electorate, the courts will not be able to improve their conduct of this side of their work. None the less, improvement must come. Organization of the non-judicial administrative business of the courts calls for complete and efficient supervision, under rules of court, which is best to be obtained by unification of the judiciary as a whole, with responsible headship, charged with supervision of the subordinate supervising and superintending officers.<sup>102</sup>

A recent report of the Advisory Commission on Intergovernmental Relations echoed Pound's conclusions. The commission report stated that:

Even in those states which have a statutorily established court administrator with broad powers and the backing of the highest court, the exercise of controls over the administration of courts at the lower levels may be hampered by an elected clerk of the court . . . . Experience has shown that election bestows independence upon

an administrative official and inclines him to resist cooperation and coordination.<sup>103</sup>

Judicial experts overwhelmingly agree that the elected clerk of court is an anachronism. The clerk of court should not be elected. Political selection of the clerk hardly ensures competency in the position.<sup>104</sup> The clerk should be appointed by and subject to the control of the judiciary.

In Montana, delegates to the 1972 constitutional convention debated whether to leave elected clerks of district court in the constitution.<sup>105</sup> The 1889 Montana Constitution mandated the election of clerks of court.<sup>106</sup>

The debate among the 1972 delegates centered upon the conflict between the need of the state district courts to control their clerical staff and the tradition of the counties to elect county officials. The delegates generally agreed that the position of clerk of court was more a judicial function than a county function.

Arguments favoring the appointment of clerks of court -- and, hence, of removing that position from the constitution -- were abundant. The clerk of court, it was argued, performs purely administrative tasks. The clerk collects fees, files legal papers, issues writs and other documents, and maintains records. The clerk of court is not a policymaker whose decisions are subject to voter approval. Because the clerk's responsibilities are administrative, the electorate has little means by which to judge the quality of the work performed. Most voters are unaware of what constitutes the job of the clerk of court. While clerks are vital to the efficient administration of the courts, they are often elected for reasons that have little relationship to court operations. The clerk of court should be removed from the constitution and the road opened for legislative action to provide for his appointment.<sup>107</sup>

The position of clerk of district court, however, was not removed from the constitution. Although the Judicial Article of the 1972 Constitution does not address the clerk of district court as had the 1889 Constitution, the Local Government Article of the new Constitution does. Article XI, Section 3, of the 1972 Constitution states that the legislature must provide, as one optional form of county government, "the election of three county commissioners, . . . . a clerk of district court, . . . ." <sup>108</sup>

Article XI, Section 3, appears to prohibit the legislature from providing for the appointment, and not the election, of the clerk of district court.

A number of alternatives, however, are available for placing the clerk of court under greater control of the judiciary. Provision could be made by the state for the appointment of a "judicial district clerk of court." The county commissioners could then decide whether they also wanted to have clerks of court; county

commissioners do have the authority to combine two or more of the county offices for which elections are now held.<sup>109</sup> Or the counties, themselves, could decide that the clerk of court should be appointed by the judge, and so establish the position under local government review. Or the state statute prescribing the duties of the clerk of court could be amended to state that "the clerk shall perform such other administrative duties as prescribed by the district judge."





*Judges (and) lawyers ... often point with pride to reforms in judicial administration during the past fifty years ... Progress, however, is a relative thing... and we have "miles to go before we sleep."*

- Milton D. Green

## OTHER TOPICS AND SUMMARY

The judiciary in Montana has traveled a long way since territorial days when courthouses were less than "imposing temples of justice." Then, one trial judge's courtroom was "the loft of a store and ... devoted promiscuously to justice, dances, sermons, itinerant shows, and other useful and ornamental institutions." Another territorial judge, Hezekiah L. Homer, was compelled to hold court "in a mosquito-ridden Gallatin City quarter in the midst of dense smoke created by burning pine boughs, which dispersed the mosquitos and well nigh dispersed the courts."<sup>110</sup>

Improvements in the Montana trial courts, and indeed in the entire judiciary, however, have often been painfully slow, occurring as it were "with all deliberate speed." As recently as 1967, two Montana Law School professors stated that Montana's judicial system "was designed for a horse and buggy society, when transportation was difficult and slow and in which controversies were simple."<sup>111</sup>

Much more needs to be done to improve the judicial system in Montana. This study, and several others before it, have only scratched the surface of the number of judicial topics that require attention.

## II

Programs for the *education* of trial judges, for example, are non-existent in Montana. Yet, the newly elected judge often lacks the knowledge and technique essential to sitting on the bench. There are no educational programs in Montana designed to prepare an attorney to be a judge, and there are no programs that provide judicial training for a judge after he has assumed the bench. Only by experience can a trial judge in Montana learn his trade, and that experience can be expensive in economic and social costs.

Responses to the judges' opinion survey generally supported the need for educational programs for judges. Fifty percent of those responding to the survey stated that their training prior to their assumption of the bench was inadequate. "Our system," one judge commented, "does not train judges, it trains attorneys, and I am not sure this is the best system."

An even greater number of judges -- 72 percent -- believed that continued education after election to the bench would be invaluable. Those judges who have attended judicial training seminars

outside of Montana found the experience very rewarding. One judge stated: "Since assuming the bench I have attended ... a number of ... seminars. What I have learned has enabled me to be a much better and more efficient judge. The law and procedures are constantly changing and this is the best way for us to keep up with the changes."

Forty-two states and the District of Columbia have judicial training programs. Several states provide for the education of newly selected judges, and twenty-one states require judges to participate in continuing education programs.<sup>112</sup> (Several states now mandate that attorneys, too, participate in continuing education activities.)

Moreover, the Joint Committee for the Effective Administration of Justice of the Conference of State Trial Judges sponsors a National College of State Trial Judges. During its first four-week session in July, 1964, ninety-six *new* state trial judges devoted 190 class and study hours to a judicial curriculum.<sup>113</sup>

Several Montana trial judges have attended the National College of State Trial Judges. Almost unanimously, Montana's trial judges have commented favorably upon their experience at the college.

Whether more should be done in the area of the education of Montana's trial judges is a question that should be addressed. (Montana does have a training program for justices of the peace.) But the continuing education of trial judges cannot be considered separately from other problems in the judiciary. As the Anzjon-Zion survey revealed, trial judges in Montana now have little time left from their judicial duties to participate in continuing education programs.<sup>114</sup>

### III

Among other judicial topics one -- the *disqualification of judges* -- merits immediate attention. Codified in the Montana statutes, the procedure that permits litigants to disqualify a judge has been the subject of much debate recently by members of the bench and of the bar. As a result, it appears that the Supreme Court will promulgate a rule to correct certain "abuses" in the disqualification procedure.

If the court does alter the disqualification procedure, the legislature must decide whether to allow the court rule to stand.<sup>115</sup> If the legislature decides in the affirmative -- by not overturning the rule in one of the two sessions following the declaration of the rule by the court -- it should amend the disqualification statute to conform to the rule. (Evidently, the Supreme Court has the authority, under its rule-making power, to change a statute that concerns a judicial procedure.)

Montana law permits the litigants in a civil case to each disqualify two judges. In criminal cases, each litigant may exercise one disqualification. Theoretically, a total of four judges can sit and can be disqualified in a civil case involving two parties -- the defendant and the prosecutor. In addition, a judge may disqualify himself.<sup>116</sup>

In cases in which a judge is disqualified by a litigant, the litigant need only state in an affidavit that he believes he cannot receive a fair trial from that judge. The litigant must file the affidavit at least fifteen days prior to the date set for trial in criminal and in civil cases.<sup>117</sup>

The statutes that permit the disqualification of district judges for imputed bias were born in 1903 of the struggle for power between two Butte copper titans -- F. Augustus Heinze and the Amalgamated Copper Company. For several years prior to 1903, Heinze had busied himself with expropriating ore from mines owned or soon to be bought by Amalgamated. Under the shield of the Apex Law, Heinze would tunnel in from his own mines to those of Amalgamated. The Apex Law, a clause in federal mining statutes, provided that if a vein of ore "apexed" or broke surface on a given claim, the owner of that claim could follow that vein any distance underground as long as he remained within a fifteen-hundred-foot length of the surface claim. The Apex Law placed no restriction on the lateral variation of the vein.

It mattered little that the Apex Law, which made sense, in mining districts where faulting had not scrambled the veins, was a farce in Butte. The Apex Law allowed Butte's two district judges -- Clancy and Hainey -- to render decisions favorable to Heinze in any case involving the latter's mining operations. And Heinze could count on favorable verdicts for he had "bought" the judges.

Amalgamated, which was owned by Standard Oil, soon became frustrated by its inability to defeat Heinze in the Silver Bow District Court. Montana law at this time made no provision for a change of venue if either party to a civil suit believed the court to be prejudiced. Consequently, when Amalgamated failed in its efforts to buy Judge Hainey away from Heinze, the Company announced -- on October 22, 1903 -- the total shutdown of all its mining enterprises in Montana. The shutdown forced twenty thousand workers off their jobs and virtually paralyzed the Montana economy.

The Company then dictated its terms. If the governor would promptly call a special session of the legislature to enact a "fair trials bill" allowing a change of venue if either party to a civil suit considered the judge prejudiced, the Company would resume its operations. On December 1, 1903, the legislature met in special session, and ten days later enacted a "fair trials" law. Soon thereafter the Company resumed operations.<sup>118</sup>

The "fair trials bill" has been revised several times since 1903.<sup>119</sup> However, the essence of the bill -- the right to disqualify a judge for imputed bias -- has remained intact.

From time to time complaints have surfaced about the abuse of the disqualification statutes. Attorneys have been accused of using disqualification to delay a trial, to buy time, and to attempt to obtain a judge who would be prejudiced in favor of their clients.<sup>120</sup>

In the past two years, complaints about attorney abuse of the disqualification statutes have been especially loud. The principal authors of these complaints have been district judges, many of whom have been disqualified by one or more of the attorneys involved in the Workers' Compensation Division cases.<sup>121</sup>

The present controversy centers upon two elements in the disqualification procedure. One, *when should the right to disqualify a judge be exercised or waived?* Several judges have argued that the present statute allows an attorney to disqualify a judge too late into the proceedings, after a judge has spent many hours studying the relevant documents. Moreover, many judges contend that the present statute renders pre-trial conferences virtually useless since an attorney may disqualify a judge during or after the pre-trial conference. Two, *should an attorney who disqualifies a judge be required to set forth the alleged facts prompting the affidavit to disqualify?* At present, an attorney need only state that he believes the judge is prejudiced. Some judges would prefer that the facts alleging the prejudice be set forth while others would prefer that the lawyer be allowed simply to file a motion for disqualification, without alleging grounds.<sup>122</sup>

No one has argued that the right to disqualify a judge should be reversed.

Based upon a study of the disqualification statute, the Montana Supreme Court intends to order changes designed to eliminate some of the alleged abuses. Professor William Crowley of the Montana Law School and Judge Nat Allen of the 14th Judicial District have assisted the court in its review of the disqualification procedure. At the time of this writing, it seems likely that the disqualification procedure will be changed by a Supreme Court rule prior to the next legislative session.

#### IV

Other judicial topics that might be considered in future studies include trial court and juvenile court procedures and district court facilities. In addition, a more sophisticated method of gauging judicial workloads should receive serious consideration. As the special committee of the legislature noted in 1929, the development of a judicial data bank would be of great value to future legislatures that might contemplate changes in the judiciary.

More than statistical analyses, however, are needed if the demands faced by the trial courts are to be met in a fashion that improves the quality of justice in Montana. The everyday operations of

the courts need to be examined to make qualitative changes in the judiciary.

This study has not been an exhaustive treatment of the trial courts. No study beginning as this did, without a foundation of accurate data, could be. If nothing else, this study reflects the need to continuously analyze and evaluate the judiciary.



## COMMITTEE DELIBERATIONS AND RECOMMENDED LEGISLATION

The Subcommittee on Judiciary met several times during the 1975-1976 interim to consider the operation of the district courts. Public hearings were held upon several occasions, and testimony was solicited from interested parties via opinion surveys. In addition, the subcommittee conducted a survey of judicial case-filings that covered the years 1960, 1964, 1970, and 1974.

Early in its deliberations the subcommittee made two decisions that guided the remainder of its work. First, the subcommittee concluded that the absence of reliable judicial statistics precluded it from proposing a radical or extensive reorganization of judicial district boundaries. Little systematic court data were available to the subcommittee when it began its study. The statistics that were available were unreliable. Moreover, when the subcommittee began to receive responses to its statistical survey it became painfully obvious that a much more sophisticated and continuous system of data collection was needed. Second, the subcommittee decided that it should go beyond studying judicial district boundaries. The operation of the trial courts involves far more than the drawing of boundary lines and the setting of the number of judges. Some agency or individual, for example, ought to be responsible for collecting and analyzing court statistics on a continuous basis.

The subcommittee's recommendations to the Forty-fifth Legislature are contained in Appendices S, T, U, V, W, X, and Y. The recommendations include five bills and two resolutions. These pieces of legislation are explained below.

### I. *Judicial Districts and Judgeships*

The subcommittee found that the workloads in at least three districts -- the thirteenth, eighteenth, and in a new district, the nineteenth -- warranted the creation of additional judgeships. The subcommittee also found that the judicial workload could be more evenly balanced by creating another district.

The first *bill* -- *Appendix S* --, therefore, creates the nineteenth judicial district comprised of the counties of Lincoln and Sanders, and the bill creates three new judgeships -- one each in the thirteenth, eighteenth, and nineteenth judicial districts. The judgeships in the thirteenth and nineteenth districts will be effective July 1, 1977. The judgeship in the eighteenth district will be effective July 1, 1980: the subcommittee was informed that the eighteenth district will not have court facilities available for another judge until 1980.

The mechanics of this bill are concise and simple. The bill was drafted in consultation with Diana Dowling, Code Commissioner.

The bill provides for the selection of the new judges in the same manner as if they were vacancies. The provision for filling vacancies is in Title 93, Chapter 7, R.C.M. 1947. Briefly, the new judges would be appointed thus: Within thirty days of the effective date of the creation of the new judgeship, the nominating commission (93-705, 93-706) must submit to the governor a list of candidates. The governor must then appoint a nominee from the list within thirty days after receiving the list (93-711). The nominee then serves until confirmed by the next Senate. Once confirmed, the appointee serves until the next succeeding general election. At that election, the person winning becomes the judge (93-713, 93-714).

Under this bill, new judges would be serving in Districts 13 and 19 no later than September 1, 1977. These judges would then have to receive Senate confirmation in 1979 and, once confirmed, they would be subject to election in November, 1980.

The second judge in the eighteenth district would be appointed no later than September 1, 1980. He would be subject to confirmation in 1981, and his judgeship would be subject to election in 1984.

The *fiscal impact* of this bill under the present method of court funding would be approximately \$60,000 in 1977, and \$90,000 in 1980 and each year thereafter. This figure is the cost to the state general fund and does not include local government expenses for physical facilities and supplies.

The cost to the state general fund of each new judgeship is approximately \$30,000 per year. This includes a salary of \$25,000 plus 15 percent fringe benefits (retirement, vacation, sick leave, etc.) and \$1,025 for travel and lodging.

## II. *Office of Court Administrator*

The subcommittee found that the creation of a state court administrator is essential to the improvement of Montana courts. All subcommittee members agreed upon the critical need to have someone collect and analyze reliable information on the court system -- only in this manner can court operations be assessed accurately and sound recommendations proposed for improvements in the judiciary.

At present, the Montana Court Administrator, established by Supreme Court order in the late fall of 1975, is funded by a grant from LEAA. The subcommittee noted that it might be easier for the court to secure appropriations for this crucial function if the Office of Court Administrator were statutorily mandated.

The question was raised during subcommittee deliberations whether the bill would impinge upon the Supreme Court's constitutional authority to supervise all other courts. Members of the Supreme Court expressed ambivalence toward the bill; they were not sure the bill was necessary, but they did not object to it.



As of September, 1976, forty-nine states and the District of Columbia had court administrators. Twenty-nine states and the District of Columbia created the office of court administrator by statute. Thirteen states established the office by constitutional amendment, two of which also placed the court administrator in the statutes, and three states created the office by Supreme Court order. Many of the states, like Maine, which created the office by statute, provide, like Montana, for supervisory control of the lower courts by the Supreme Court (see Appendices Q and R).

Some debate also ensued regarding the question of whether to include in the bill a provision prohibiting the court administrator from scheduling the calendars of the district judges. This provision was not included in the bill. In one sense, that of moving a judge from one district to another, the constitution limits the authority of the Supreme Court to schedule judge calendars. Article VII, Section 7, subsection (3) of the constitution states: "The chief justice may, upon request of the district judge, assign district judges and other judges for temporary service from one district to another, and from one county to another." In another sense, however, a provision to prohibit the court administrator -- hence, to prohibit the Supreme Court under whose authority the administrator operates -- from scheduling calendars could be unconstitutional. The constitution states that the Supreme Court "has general supervisory control over all other courts," and no constitutional provision specifically prohibits the Supreme Court from scheduling the calendar of a district judge within that judge's district. Indeed, the constitution does state that the Supreme Court "may make rules governing appellate procedure, practice and procedure for all other courts." Thus, if the Court may make rules for district courts, i.e., on how a judge is to be disqualified, the Court could conceivably make rules regarding calendars.

The *bill* establishing the Office of Court Administrator -- *Appendix T* -- as approved by the subcommittee, outlines the administrator's appointment and duties and provides for the supervision of the administrator by the Supreme Court. In addition, all court officers are directed to comply with the administrator's requests for information.

The *fiscal impact* of this bill is, at this writing, somewhat uncertain. In the past fiscal year, 1976-77, the office of court administrator was funded by a \$30,000 LEAA grant from the Montana Crime Control Board. For the next fiscal year, 1977-78, the Supreme Court is seeking an LEAA grant from the MCCB of approximately \$50,000 for the court administration project. For fiscal year 1978-79, the Court anticipates requesting approximately \$60,000 from MCCB or from the Legislature.

The present budget of \$30,000 and the anticipated annual budgets of \$50,000-\$60,000 for the next two years represent modest beginnings. These budgets include staff salaries, office supplies, and expenses for the initial development of a statistical reporting system. Future requests for legislative appropriations

might include funds for judicial training and courts planning. In the case of judicial training, the court might first approach the MCCB and, later the legislature, depending upon the success of such a program. In any event, the Court would make specific requests to the legislature for specific programs undertaken by the Court and its administrator.

### III. *Salaries and Expenses of Court Reporters*

A third *bill* -- *Appendix U* -- approved by the subcommittee provides that the state will pay the salaries and expenses of court reporters. Although some subcommittee members objected to the fact that court reporters make money above their salary because of the fees they collect under section 93-1904, all members agreed that the present method of paying clerks of court is clumsy and that the state should fund this function.

The bill as drafted provides that the Supreme Court and District Judges will establish the salary levels and personnel policies for court reporters.

The *cost* to the state general fund of this bill would be approximately \$500,000 per year. This figure assumes: (1) a total of 30 court reporters, one for each judge including one for each of the two new judges created in the first bill above; (2) that the present salary of court reporters will not change drastically -- they now receive between \$12,500 and \$16,000 annually; (3) fringe benefits; and (4) an amount for travel and lodging.

### IV. *Judicial Training Standards*

The subcommittee also approved a *bill* -- *Appendix V* -- that provides for the court administrator to develop training programs and standards for trial court judges. The subcommittee found that judicial training was a very important subject, with the district judges and that continuous training would help improve the quality of justice rendered in Montana. It also would be a big step toward modernizing the judicial system in Montana.

Modernization of the judicial system is not a new phenomenon. The proliferation of efforts to upgrade the judiciary can generally be traced to a speech by Roscoe Pound to the American Bar Association in 1906. In his presentation he not only criticized judicial procedure, but also the system. There he recognized that the quality of justice ultimately depends upon the quality of performance of the judges and all judicial officers functioning within the system.

The American trial judge usually receives no formal training or apprenticeship in the judicial function. Montana trial and appellate judges are generally no exception. Each usually assumes the bench with no knowledge of the art of judging, other

than perhaps some experience as a trial lawyer, an experience which rarely includes extensive criminal practice.

The length of judicial careers in this country justifies a substantial investment in preservice and inservice training and education. There are indications that judges of courts of general jurisdiction serve on the average more than 25 years.

The need for judicial training has been addressed in some depth during the last decade. The President's Commission on Law Enforcement and Administration of Justice in 1967 and the National Advisory Commission on Criminal Justice Standards and Goals in 1973 are two national commissions speaking to the need for orientation and ongoing-inservice educational programs for the judiciary in each state. In 1974 the American Bar Association published standards on court organization. Standard 1.25 underscores the need for ongoing training and education of the judiciary.

The Montana Criminal Justice Standard and Goals Commission is considering standards for the State's judiciary consistent with nationally recommended standards in the field of judicial education. For example:

#### JUDICIAL EDUCATION

"Every State should create and maintain a comprehensive program of continuing judicial education. Planning for this program should recognize the extensive commitment of judge time, both as faculty and as participant for such programs, that will be necessary to prepare, administer, and conduct the programs, and funds to permit judges to attend appropriate national and regional educational programs, should be provided."

Proliferated efforts to modernize all facets of the judicial system recognize that the quality of justice will depend on the quality of performance of the judiciary. Justice can never be better than the people who are involved in administering it.

Dean Ernst J. Watts, Director, National College of the States Judiciary, in an address to the Conference of Chief Justices stated, in part, "Unfortunately, there is little sustained leadership in the field of judicial education at this time. No one seems to be willing to take on the responsibility to seek adequate funding for educational programs for judges and court support staff. In fact, in some states the legislature has taken the initiative by requiring a specific amount of judicial education in order for judges to be paid and to serve as well as a standard as to whether they will be reappointed or allowed to run for re-election."

The 1972 Montana Constitution mandated ongoing training for non-lawyer city judges and justices of the peace. From time to time District Judges and Supreme Court Justices have availed themselves of advanced training, provided they could take the time to foster the bureaucratic paper necessary to get the funds to travel and study out of state.

Shortly after the subcommittee's last meeting, the Supreme Court approved a pilot plan to promote educational opportunities for appellate and trial judges. In consolidating educational opportunities for appellate and trial judges, the plan eliminates much bothersome paper work and other inconveniences. The plan is designed to foster judicial training in Montana, to reduce the need to seek educational opportunities outside of the state, and to provide more judges with more opportunities to participate in judicial training.

The purpose of this bill would be to provide legislative encouragement to the Court in its training efforts.

The *fiscal impact* of this bill will probably be negligible in the next biennium. The Supreme Court is applying for a grant of approximately \$25,000 from the Montana Board of Crime Control to fund the first year of the pilot plan. This \$25,000 includes: \$4,000 for out-of-state training (in the past nearly all funds were used for out-of-state training); \$6,000 for the Five-State Regional Conference of Judges to be held in Coeur d'Alene, Idaho; \$900 for clerk of court training; \$6,500 for lower court judge seminars (justices of the peace, city courts, etc.); and approximately \$7,000 for Youth Court educational activities. (By way of contrast, North Dakota has budgeted \$105,880 for fiscal year 1976 for its training program for all of its judges.)

Future Montana legislatures may receive requests for judicial training expenses from the Supreme Court.

#### V. *Appropriation for Law Clerks*

During its study, the subcommittee received several indications that some district judges would be greatly assisted in their work by the addition of a law clerk to their staff. Some subcommittee members wondered whether the subcommittee would be "creating a need" for law clerks "where none existed before" by appropriating funds for law clerks. The subcommittee decided to recommend an appropriation of \$150,000 for law clerks for the next biennium so that a program of law clerks could be tried on an experimental basis.

The *bill -- Appendix W --* adopted by the subcommittee, with one dissenting vote, provides funds for approximately 5-6 law clerks. The law clerk program would operate under the auspices of the Supreme Court. Whether law clerks are funded past this next biennium would depend upon whether the next legislature feels

the program is worthwhile or not. The subcommittee noted that if the program is successful the Supreme Court should be the body that justifies it to the next legislature in its budget request.

The *cost* of the bill to the state general fund would be \$150,000 for the biennium.

#### VI. *Reporting of Court Data to the Legislature*

The subcommittee unanimously adopted a *resolution -- Appendix X --* requesting the Chief Justice to attach to his State of the Law message to each legislature a statistical report on the business transacted by the district courts. This resolution establishes a vehicle whereby court data is transmitted to the legislature. And thus, the legislature can determine if the information provided is of the quality it needs in order to evaluate the needs of the judiciary.

This resolution has essentially no *fiscal impact*.

#### VII. *Exploration of Alternatives to the Creation of More Judgeships*

The subcommittee unanimously adopted a *resolution -- Appendix X --* requesting that the Supreme Court fully explore the use of law clerks and secretaries before any subsequent legislature creates new judgeships. The subcommittee found that in some districts law clerk and secretarial assistance to judges might offset the need to create additional judges. Such a resolution, the subcommittee determined, would be a message to those who seek law clerks, secretaries, or new judges for their districts that they should come to the legislature prepared to justify their requests.

There is no *fiscal impact* to this resolution.



## FOOTNOTES

<sup>1</sup>Article VIII, Section 6, Constitution of Montana, 1972.

<sup>2</sup>Senate Bills 204, 228, and House Bill 605. See also Senate Bills 611 and 738, Montana Legislative Session, 1974.

<sup>3</sup>Minutes, Senate Committee on Judiciary, March, 1975.

<sup>4</sup>First Annual Address, Chief Justice Harrison to the 44th Montana Legislature, January, 1975.

<sup>5</sup>Minutes, Senate Committee on Judiciary, March, 1975.

<sup>6</sup>Senator Thomas E. Towe to Senator Neil J. Lynch, March 13, 1975.

<sup>7</sup>Minutes, Committee on Priorities, April 9, 1975.

<sup>8</sup>Ibid.; Towe to Lynch, March 13, 1975

<sup>9</sup>David R. Mason and William F. Crowley, "Montana's Judicial System -- A Blueprint For Modernization", Montana Law Review, 29 (Winter, 1967), pp. 1-41; Erwin L. Anzjon and James W. Zion, "The Montana Justice System: Survey and Analysis", unpublished research report for the Montana Supreme Court, 1974, pp. 1-66.

<sup>10</sup>See supra, pp.

<sup>11</sup>In Greek mythology, Penelope was the wife of Odysseus. In Homer's Odyssey, Penelope is surrounded by suitors while Odysseus is away. The suitors try to persuade Penelope that Odysseus will never return. She agrees to choose another husband when she finishes weaving her father-in-law's raiment. But this was never done, for Penelope unraveled by night what she wove by day.

<sup>12</sup>Article XIII, Section 3, Constitution of Montana, 1972; 59-1401 to 59-1404, Revised Codes of Montana, 1947.

<sup>13</sup>See the Mason-Crowley, Anzjon-Zion studies; and Sandra R. Muckelston, The Judiciary (Constitutional Convention Study No. 14, Helena, Montana, 1972); William H. Erickson, "Will Colorado's Effort to Improve the Administration of Justice Help Montana?" Montana Law Review, 33 (Winter, 1971), pp. 52-62; David R. Mason and Edward L. Kimball, "Montana's Justices' Courts -- According to the Law", Montana Law Review, 23 (Fall, 1961), pp. 62-92; Lon T. Holden, "Justice Court Reform in Montana", Montana Law Review, 34 (Winter, 1973), pp. 122-149; John H. Kuenning, "Improvement of the Montana Minor Court System -- What is Possible?" state chapter in Glenn R. Winters and R. Stanley Lowe, eds., Selected Readings on the Administration of Justice and Its Improvement (Chicago: American Judicature Society, 1973), pp. 1-32; E. Gardner Brownlee, "The Revival of the Justice of the Peace in Montana", Judicature, 58 (March, 1975), pp. 372-379.

<sup>14</sup>Muckelston, The Judiciary, pp. 34-35; and Milton D. Green, "The Business of the Trial Courts", in Harry W. Jones, ed., The Courts, The Public, and the Law Explosion (The American Assembly, Columbia University, Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1965), pp. 7, 13-14.

<sup>15</sup>Glenn R. Winters and Robert E. Altard, "Judicial Selection and Tenure in the United States", in The Courts, The Public, and the Law Explosion, p. 177.

To arrive at the figure of 99 percent, one would have to exclude traffic offenses and misdemeanors. For example, in 1972, according to the Anzjon-Zion survey, 37,931 cases were filed in Justice of the Peace Courts, 35,147 of which were criminal offenses and traffic violations. By contrast, a total of 23,379 cases were filed in the state district courts.

<sup>16</sup>Muckelston, The Judiciary, pp. 34-35.

The portion of Montana's judicial article concerning redistricting is virtually identical to that in the Kansas constitution. See Beverly Blair Cook, "Judicial Roles and Redistricting in Kansas", Kansas Law Review, 17 (1969), pp. 396, 400.

<sup>17</sup>According to Christopher Manning, legislative redistricting has not established sound judicial districts because "many legislatures do not know what to do with the power (to redistrict) they have. All too often when judicial manpower needs are linked to the political process, judgeships become political footballs...Even when the creation of new judgeships is not tainted...the process is often uneven and slow-moving." Legislative action in reapportioning judicial districts "could (be) entitled legislative inaction". Judgeship Criteria: Standards for Evaluating the Need for Additional Judgeships (Chicago: American Judicature Society, 1973), p. 16.

<sup>18</sup>See, for instance, Cook, "Judicial Roles and Redistricting in Kansas", pp. 391-415; Harvey Uhlenhopp, "Judicial Redistricting in Iowa", Drake Law Review, 18 (December, 1968), pp. 47-65.

<sup>19</sup>Judge J.C. Ruppenthal, quoted in Cook, "Judicial Roles and Redistricting in Kansas", p. 397.

<sup>20</sup>Manning, Judgeship Criteria, pp. 9-13.

<sup>21</sup>Ibid., p.7.

<sup>22</sup>Cook, "Judicial Roles and Redistricting in Kansas", pp. 394-398, 407-413.

<sup>23</sup>Uhlenhopp, "Judicial Redistricting in Iowa", p. 50.

<sup>24</sup>Jones, "Introduction", in The Courts, The Public, and The Law Explosion, p.2.

<sup>25</sup>Ibid., pp. 2-3.



<sup>26</sup>In 1973, the National Advisory Commission on Criminal Justice, Standards and Goals summed up the plight of the nation's courts: "The court system in the United States is in serious difficulty.... Backlogs are enormous; workloads are increasing. The entire court system is underfinanced." Courts (Task Force on Courts, Law Enforcement Assistance Administration, U.S. Department of Justice), p.1.

For recent state efforts to reform the judiciary, see The Council of State Governments, State Court Systems: Revised, 1974 (Lexington, Kentucky, 1974).

<sup>27</sup>Jones, "Introduction", in The Courts, The Public, and The Law Explosion, p.4.

<sup>28</sup>Ibid., Also see Courts, passim, in which a multitude of remedies to the ills of the courts are presented.

<sup>29</sup>Manning, Judgeship Criteria, p. 1; Maurice Rosenberg, "Court Congestion: Status, Causes, and Proposed Remedies", in The Courts, The Public, and The Law Explosion, p. 30.

Many may recall also the Jarndyce estate case in Charles Dickens' classic of social realism, Bleak House, "dragging its course through the courts decade after decade, blighting the hopes and desperate expectations of countless litigants." Bleak House, introduction by Morton D. Zabel (Boston, Riverside Press, 1956; Originally published in 1853), p. XIV.

<sup>30</sup>Manning, Judgeship Criteria, p. 1.

<sup>31</sup>Jones, "Introduction", in The Courts, The Public, and The Law Explosion, p. 5.

<sup>32</sup>Idaho Legislative Council, Court Modernization in Idaho (Boise, Idaho, 1966), passim.

<sup>33</sup>Forty-seven states now employ full-time court administrators. The Council of State Governments, Judicial Administration: Education and Training (Lexington, Kentucky, 1975), pp. 3-5.

Forty projects are currently underway in various states that relate directly to court reform. Advisory Commission on Intergovernmental Relations, Information Bulletin, 76-1 (March, 1976), p. 1.

<sup>34</sup>Manning, Judgeship Criteria, p. 14.

<sup>35</sup>Ibid. See also David Groose, The Quality of State Judicial Statistics (Chicago: American Judicature Society, 1969), pp. 2-3.

<sup>36</sup>Manning, Judgeship Criteria, p. 14.

<sup>37</sup>Groose, Quality of Judicial Statistics, pp. 2-5.

<sup>38</sup>Ibid.; Manning, Judgeship Criteria, p. 14.

<sup>39</sup>Manning, Judgeship Criteria, p. 14.

<sup>40</sup>Article VIII, Sections 12, 14, Constitution of Montana, 1889.

<sup>41</sup>Ibid.

<sup>42</sup>6256-6264, Revised Codes of Montana, 1907; 8812-8814, Revised Codes of Montana, 1921; Laws of Montana, Chapter 91 (1921); Chapter 18 (1955); Chapter 91 (1957); Chapter 161 (1959); Chapter 229 (1963); Chapters 14, 23 (1973).

See also the preliminary sketches of Montana's judicial districts, 1889-1973, prepared by Professor Ellis Waldron, University of Montana; copies in possession of Legislative Council, Helena, Montana.

<sup>43</sup>Ibid.

<sup>44</sup>Jerry Holloron, Montana Counties on the Move (Helena, Montana: Montana Association of Counties, 1974), p. 3.

<sup>45</sup>Manning, Judgeship Criteria, p.3.

<sup>46</sup>From 1889 to 1925, the number of counties in Montana rose from 16 to 56. The 1889 Constitution had allowed for relatively easy and unplanned creation of additional counties. Holloron, Montana Counties on the Move, pp. 2-5.

<sup>47</sup>Professor Ellis Waldron quoted in Holloron, Montana Counties on the Move, p. 6. See also K. Ross Toole, Twentieth-Century Montana: A State of Extremes (Norman: University of Oklahoma Press, 1972), pp. 101-121.

<sup>48</sup>House Journal of the Twentieth Legislative Assembly of the State of Montana (Helena, Montana: Office of the Secretary of State, 1929), pp. 637-644.

<sup>49</sup>Ibid.

<sup>50</sup>Chapter 80, Laws of Montana, 1947.

<sup>51</sup>Laws of Montana, Chapter 18 (1955); Chapter 91 (1957); Chapter 161 (1959); Chapter 229 (1963).

<sup>52</sup>District 13 (Billings); District 11 (Kalispell); District 8 (Great Falls); District 4 (Missoula).

The figures herein for Missoula County and for the 4th Judicial District are from the District court orders apportioning the court reporters salaries as provided in 93-1906, R.C.M. 1947. The years 1959, 1963, 1969, and 1973 should be substituted for the years 1960, 1964, 1970, and 1974, respectively, wherever data occurs for Missoula County and for District 4.

<sup>53</sup>No court has yet ruled that judicial districts must be apportioned according to population, for instance. Indeed, several court decisions have upheld legislative prerogative to apportion judges as it deems appropriate. Moreover, opponents to the concept of "one man, one vote" for judicial districts argue that a court is not designed to be a representative body. Manning, Judgeship Criteria, p. 6.

<sup>54</sup>Manning, Judgeship Criteria, p. 7.

<sup>55</sup>Cook, "Judicial Roles and Redistricting in Kansas", p. 406; Study of the Judicial System of the State of Utah (College of Law, University of Utah, Ogden, Utah: Utah Legislative Council, 1966), pp. 47-48.

<sup>56</sup>Sections 93-901, 95-1709, 95-2010, Revised Codes of Montana, 1947. The first two sections apply to district judges; the third, to justices of the peace, magistrates, and police court judges.

<sup>57</sup>Another, albeit highly tenuous, measurement of delay in the district courts is the number of cases that are appealed to the Supreme Court. In this regard, the Chief Justice of the Montana Supreme Court recently stated that "we will go into the new year (1976) with the biggest backlog of cases in years". Great Falls Tribune, December 5, 1975.

<sup>58</sup>Helena Independent Record, March 12, 1976.

<sup>59</sup>Ibid.

<sup>60</sup>Study of the Judicial System of the State of Utah, Appendix B-1.

<sup>61</sup>Cook, "Judicial Roles and Redistricting in Kansas", p. 411; Manning, Judgeship Criteria, p.7.

<sup>62</sup>Article VIII, Section 2.

<sup>63</sup>One judge, for example, stated during the subcommittee's September public hearing that his clerk of court's only qualifications were that "she made the best coffee and cookies in the county". The voters, he noted, are unaware of what role a clerk plays in the judicial system.

See also Jones, The Courts, The Public, and The Law Explosion, passim.

<sup>64</sup>Anzjon and Zion, "The Montana Justice System: Survey and Analysis", pp. 22-25.

<sup>65</sup>Montana Board of Crime Control, Comprehensive Plan for Criminal Justice Improvement (Helena, Montana: 1976), p. 94.

<sup>66</sup>Minutes, Subcommittee on Judiciary, September 6, 1975.

<sup>67</sup>National Center for State Courts, Administrative Unification of the Maine State Courts (Boston, Mass.: January, 1975), p. 16.

<sup>68</sup>Minutes, Subcommittee on Judiciary, September 6, 1975.

<sup>69</sup>For examples, see National Advisory Commission on Criminal Justice Standards and Goals, The Courts, pp. 176-177; American Bar Association Commission on Standards of Judicial Administration, Standards Relating to Court Organization, 1.40-1.41; sections

685.6-685.10, Code of Iowa, 1975; sections 1-611 - 1-615, Idaho Codes; sections 20-318 - 20-324, Kansas Statutes Annotated; sections 78-3-23 - 78-3-27, Utah Code Annotated.

<sup>70</sup>See 59-538, 59-539, 59-801, 93-303, 93-305, and 93-313, R.C.M. 1947. The last two sections refer to a judge's expenses when sitting in a court or attending a conference outside of his district.

<sup>71</sup>Muckelston, The Judiciary, p. 100. The salary of court reporters is set by state law; however, the salary is paid by the counties that comprise the judicial district which the court reporter serves. The judge apportions the reporter's salary among the counties according to 93-1906, R.C.M. 1947.

<sup>72</sup>59-538 and 59-801, R.C.M. 1947.

<sup>73</sup>State Assumption of Financial Responsibility For Court Administration, draft proposal, State Commission on Local Government, Helena, Montana, 1976, pp. 1-2.

<sup>74</sup>Not included in this total "are quasi-judicial expenditures, which are not direct judicial costs but which may be ordered by the District Judges for expenses . . . . The primary . . . quasi-judicial expenditure was Juvenile Probation, amounting to about \$362,731 in 1974. Total District Court expenditures for Fiscal Year 1974, therefore, were \$2,551,226". Ibid.

The MBCC places district court costs for the counties for 1974 at \$1,788,045.26, excluding District 18, which did not report. Comprehensive Plan for Criminal Justice Improvement, pp. 89-92.

<sup>75</sup>In FY-1968, the state share of district court expenses was 29 percent. Muckelston, The Judiciary, p. 111.

<sup>76</sup>See Muckelston, The Judiciary, pp. 113-115; State Assumption of Financial Responsibility For Court Administration, draft proposal, pp. 1-2; Winters and Lowe, Selected Readings on the Administration of Justice, pp. 27-32; Carl Baar, "The Limited Trend Toward State Court Financing", Judicature, 58 (February, 1975), pp. 322-329.

<sup>77</sup>Comprehensive Plan for Criminal Justice Improvement, p. 94.

<sup>78</sup>See note 76, above.

<sup>79</sup>Baar, "Limited Trend Toward State Court Financing", p. 322.

<sup>80</sup>Winters and Lowe, Selected Readings on the Administration of Justice, p. 31.

<sup>81</sup>Muckelston, The Judiciary, p. 110.

<sup>82</sup>State Assumption of Financial Responsibility for Court Administration, draft proposal, p. 3.

The State Local Government Study Commission and the Montana Justice Project, evidently, will propose to the 1977 Legislature some form of state court financing.

<sup>83</sup>Minutes, Subcommittee on Judiciary, February 28, 1976.

<sup>84</sup>Comprehensive Plan For Criminal Justice Improvement, p. 94.

<sup>85</sup>Minutes, Subcommittee on Judiciary, September 6, 1975.

<sup>86</sup>Ibid.

<sup>87</sup>Ibid.

<sup>88</sup>During the subcommittee's meeting of February 28, 1976, Judges Sande, Dussault, Blair, and Shanstrom stated that a law clerk would be of no use to them. Minutes.

<sup>89</sup>93-1901, R.C.M. 1947.

<sup>90</sup>93-1902, R.C.M. 1947.

<sup>91</sup>Comprehensive Plan For Criminal Justice Improvement, p. 94.

<sup>92</sup>Judge Dussault stated that he could not force his court reporter to take depositions, and Judge Blair stated that there is nothing in the law that requires a court reporter to perform secretarial duties. Minutes, Subcommittee on Judiciary, February 28, 1976.

<sup>93</sup>93-1906, R.C.M. 1947.

<sup>94</sup>Ibid.

<sup>95</sup>Ibid.

<sup>96</sup>93-1906, R.C.M. 1947.

A court reporter also receives fees paid by the county for providing transcripts of the proceedings and testimony of any particular case to defendants and prosecutors. 93-1904, R.C.M. 1947.

<sup>97</sup>16-2406, R.C.M. 1947.

<sup>98</sup>25-605 and 25-609.1, R.C.M. 1947.

<sup>99</sup>16-3001, R.C.M. 1947.

<sup>100</sup>Ibid.

<sup>101</sup>Comprehensive Plan For Criminal Justice Improvement, p. 94.

<sup>102</sup>Organization of the Courts (1940), pp. 285-287.

<sup>103</sup>Quoted in Sandra R. Muckelston, The Judiciary, p. 211.

<sup>104</sup>See for instance, National Center for State Courts, Administrative Unification of the Maine State Courts, Final Report (Boston: 1975), pp. 32-34.

<sup>105</sup>See Transcript of Proceedings, Montana Constitutional Convention (Helena, Montana: State Capitol, 1972), Vol. V., pp. 3131, 3155, 3491-3497, passim, and Vol. X, pp. 7680-7692.

<sup>106</sup>Article VIII, Section 18, Montana Constitution of 1889.

<sup>107</sup>Transcript of Proceedings, Vol. X, pp. 7680-7692.

<sup>108</sup>Article XI, Section 3 reads in full:

"Forms of government. (1) The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator. The terms, qualifications, duties, and compensation of those offices shall be provided by law. The Board of county commissioners may consolidate two or more such offices. The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties."

<sup>109</sup>Article XI, Section 3, Montana Constitution of 1972.

<sup>110</sup>Clark Spence, Territorial Politics and Government In Montana (Urbana: University of Illinois Press, 1975), p. 214.

<sup>111</sup>Mason and Crowley, "Montana's Judicial System", p. 1. District Judge Paul Hatfield, chairman of the Montana Justice Project's Task Force on Courts, recently stated that the present judicial system in Montana is so uncoordinated that it is in reality a "nonsystem." Great Falls Tribune, April 13, 1976.

<sup>112</sup>The Council of State Governments, Twentieth Annual Conference of State Court Administration, Summary (New York: The Council, 1974), pp. 1-12.

<sup>113</sup>Winters and Allard, "Judicial Selection and Tenure in the United States", in The Courts, The Public, and The Law Explosion, pp. 172-175.

<sup>114</sup>Anzjon and Zion, "The Montana Justice System", p. 25.

<sup>115</sup>Article VII, Section 2, Constitution of Montana, 1972.

<sup>116</sup>93-901 and 95-1709, R.C.M. 1947. The former statute concerns disqualification in civil cases; the latter in criminal cases. Section 95-2010 allows for disqualification of justices of the peace and other lower court judges in the same manner as a district judge.

<sup>117</sup>93-901 and 95-1709, R.C.M. 1947.

<sup>118</sup>The historical background on the disqualification procedure is taken from K. Ross Toole, Twentieth-Century Montana: A Land of Extremes, (Norman: University of Oklahoma Press, 1972), pp. 101-121.

<sup>119</sup>Chapter 3, 2nd Extra Session, Laws of Montana, 1903; Chapter 114, Laws of Montana, 1909; Chapter 27, Laws of Montana, 1927; Chapter 218, Laws of Montana, 1961; Chapter 82, Laws of Montana, 1963; Chapter 196, Laws of Montana, 1967; Chapter 281, Laws of Montana, 1975.

<sup>120</sup>Lawrence H. Sverdrup, "Affidavit for Disqualification of a District Judge for Imputed Bias in a Criminal Case Not Timely After Verdict", Montana Law Review, 26 (Fall, 1964), pp. 123-133; "Court Eyes Change in Rules for Disqualification of Judges", Great Falls Tribune, December 5, 1975.

<sup>121</sup>"Court Eyes Change", Great Falls Tribune, December 5, 1975.

<sup>122</sup>Ibid.





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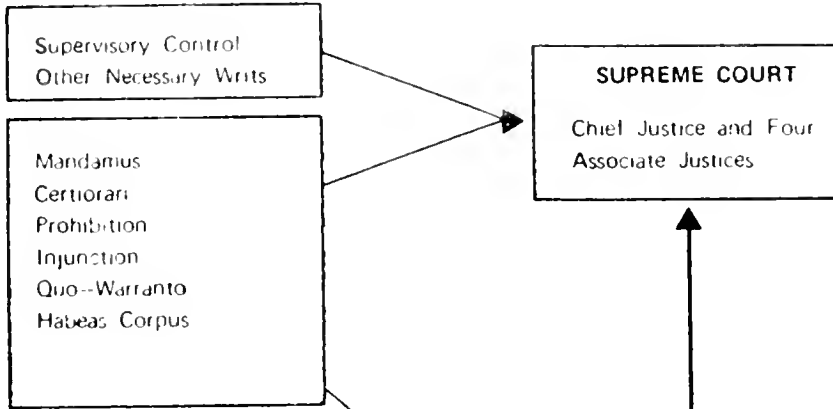


## A P P E N D I C E S

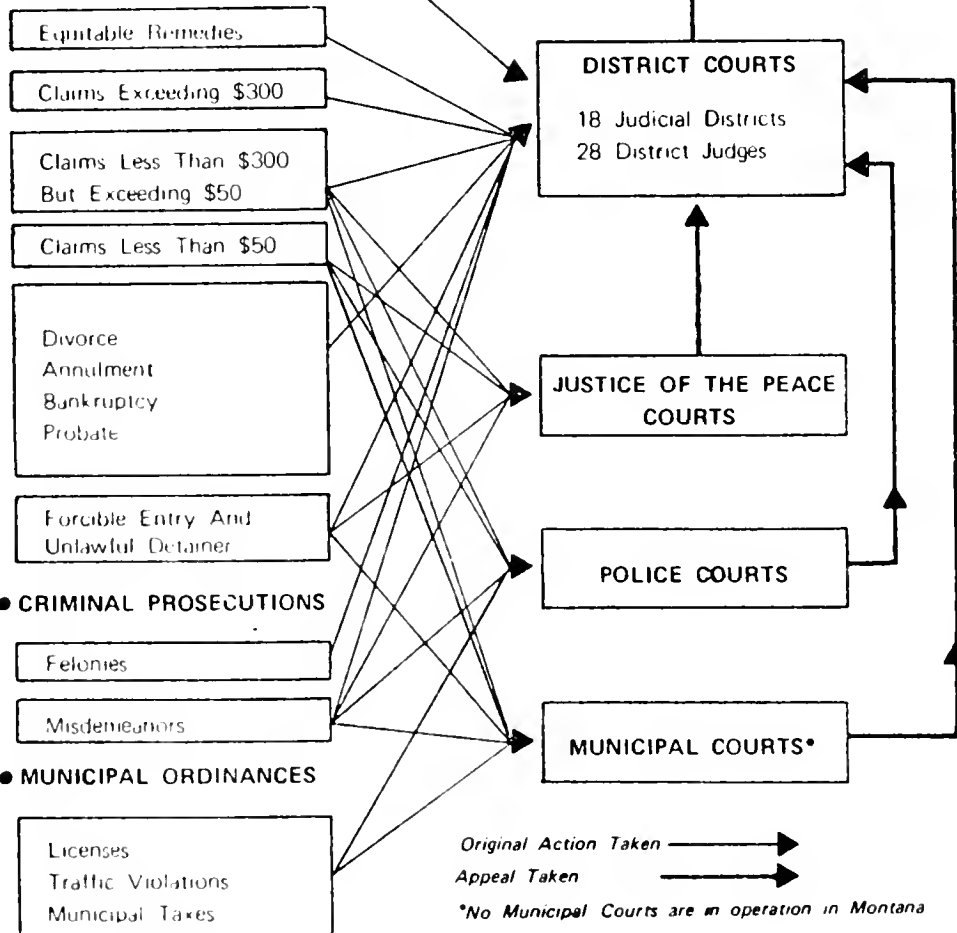


SUMMARY OF JURISDICTION EXERCISED BY MONTANA COURTS

• CONSTITUTIONAL WRITS



• CIVIL ACTIONS



Source: Sandra R. Muckelston, The Judiciary, Constitutional Convention Study No. 14, Montana Constitutional Convention, 1971-1972, Helena, Montana, 1972, p. 38.



# APPENDIX B

## DISTRICT JUDGE VITAL STATISTICS AS OF JANUARY 1, 1976

<u>JUDGE</u>	<u>DISTRICT</u>	<u>D/O/B</u> *	<u>AGE</u>	<u>AGE SWEARING IN</u>	<u>SWORN IN</u>	<u>YEARS SERVICE</u>
W. W. Lessley	18	5/27/07	68	41	11/49	27
LeRoy L. McKinnon	10	12/16/11	64	43	6/55	21
Robert J. Nelson	8	12/17/13	62	43	1/57	19
E. Gardner Brownlee	4	1/07/17	58	42	7/59	16
L.C. Gulbrandson	7	10/28/22	53	37	12/59	16
Charles B. Sande	13	10/24/15	60	44	1/60	16
Nat Allen	14	12/22/10	65	50	1/60	15
Paul G. Hatfield	8	4/29/28	47	32	1/61	15
Thomas Dignan	17	3/24/11	64	51	5/62	13
Ronald D. McPhillips	9	3/14/32	43	30	1/63	13
Jack L. Green	4	5/18/22	53	41	3/63	12
Truman G. Bradford	8	7/26/99	76	65	1/65	11
Jack D. Shanstrom	6	11/30/32	43	32	1/65	11
James D. Freebourn	2	3/24/12	63	53	1/65	10
Arthur B. Martin	16	1/16/13	62	52	5/65	10
Alfred B. Coate	16	3/20/27	48	40	4/67	8
Charles Luedke	13	5/26/19	56	48	9/67	8
Robert C. Sykes	11	2/24/19	56	48	9/67	8
Bernard W. Thomas	12	1/26/15	60	52	10/67	8
Robert S. Keller	11	12/05/27	48	41	1/69	7
M. James Sorte	15	2/22/31	44	38	8/69	6
Robert H. Wilson	13	9/23/29	46	40	10/69	6
Gordon R. Bennett	1	7/19/22	53	48	1/71	5
Frank E. Blair	5	8/24/90	85	80	11/70	5
Peter G. Meloy	1	2/22/08	67	63	1/72	4
Robert J. Boyd	3	7/18/23	52	49	12/72	3
Edward T. Dussault	4	1/02/11	64	62	12/72	3
Arnold Olsen	2	12/17/16	59	58	3/75	1
William E. Hunt	**WC	2/28/23	52	52	7/75	1

\*Date-of-Birth.

\*\*Worker's Compensation Judge.

Source: Office of the Court Administrator.



State of Montana  
*Supreme Court*  
HELENA



JAMES T. HARRISON  
CHIEF JUSTICE

October 31, 1975

MEMO TO DISTRICT JUDGES:

The Supreme Court has established the position of Court Administrator and appointed Ray Stewart, a resident of Helena, the first administrator for Montana's judicial branch.

His primary function will be to provide nonjudicial, management services to the Supreme Court and the District Judges. The Supreme Court will direct the court administrator in matters of a policy nature, and on a day to day basis he will report to the Chief Justice.

The court administrator's duties will include, but may not be limited to the following:

FINANCE

1. Prepare and present judicial branch budget requests to the executive and legislative branches of government.
2. Assist individual Judges and commissions who seek special program funding.
3. Audit Judges' travel claims and expedite processing those claims through the state's financial system.

CONFERENCES

1. Assist with justice of the peace and city judge training conferences.
2. Assist the President and the Chief Justice with the annual Montana Judges Conference.
3. Assist with special conferences and inservice training at the direction of the Court.

ADMINISTRATIVE

1. Inventory facilities, equipment, personnel and other resources available to the judicial branch.

Memo to Judges  
October 31, 1975  
Page two

2. Collect, analyze and report statistics and other pertinent information about the work of the judicial branch.
3. Serve as administrative assistant to the Chief Justice, and at his direction investigate complaints about the judicial branch.

#### RULES

1. Prepare for the Supreme Court's approval internal operating rules to help guide the workload of the Supreme Court.
2. Prepare revisions to rules for the appropriate judicial commission at the Court's direction and publish updates as necessary.
3. Maintain and distribute to all users current listings of all rules issued by the Supreme Court.

Mr. Stewart brings to the position of court administrator a varied background, which the Court thought would be useful to the tasks he has been assigned. He was born and reared in Havre, Montana, earned a baccalaureate degree in history and foreign languages from Rocky Mountain College and pursued more than 90 graduate hours in law, history, public administration and computer science at Montana's two universities.

A former newspaperman and writer, who lived and worked in Billings, Livingston and Missoula, Stewart has over nine years experience in state government: Four years on the University of Montana staff as a lecturer, writer, researcher, and technical editor; four years on the former Planning and Economic Development staff as a researcher, budget officer and financial manager; six months on the Legislative Auditor's staff as a writer, financial researcher and training officer; three months on the House Appropriations Committee staff as fiscal analyst and investigator; and fifteen months on the Attorney General's staff as administrative assistant.



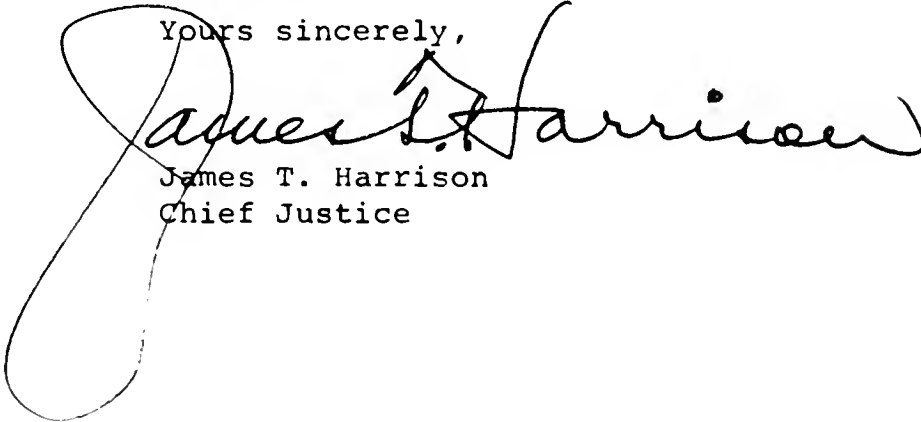
Memo to Judges  
October 31, 1975  
Page three

It is my hope, shared by the Associate Justices on the Supreme Court, that now that we have embarked upon this program all members of the state's judicial branch will offer their assistance, cooperation and recommendations for improving the court administrator's service to the judiciary.

We realize the services of one man may seem scant to the District Judges in the beginning, but we are agreed to build this program carefully and implore your patience as we proceed slowly at first.

Should you have any questions please do not hesitate to direct them to Ray Stewart at 449-2923 or myself. I remain,

Yours sincerely,

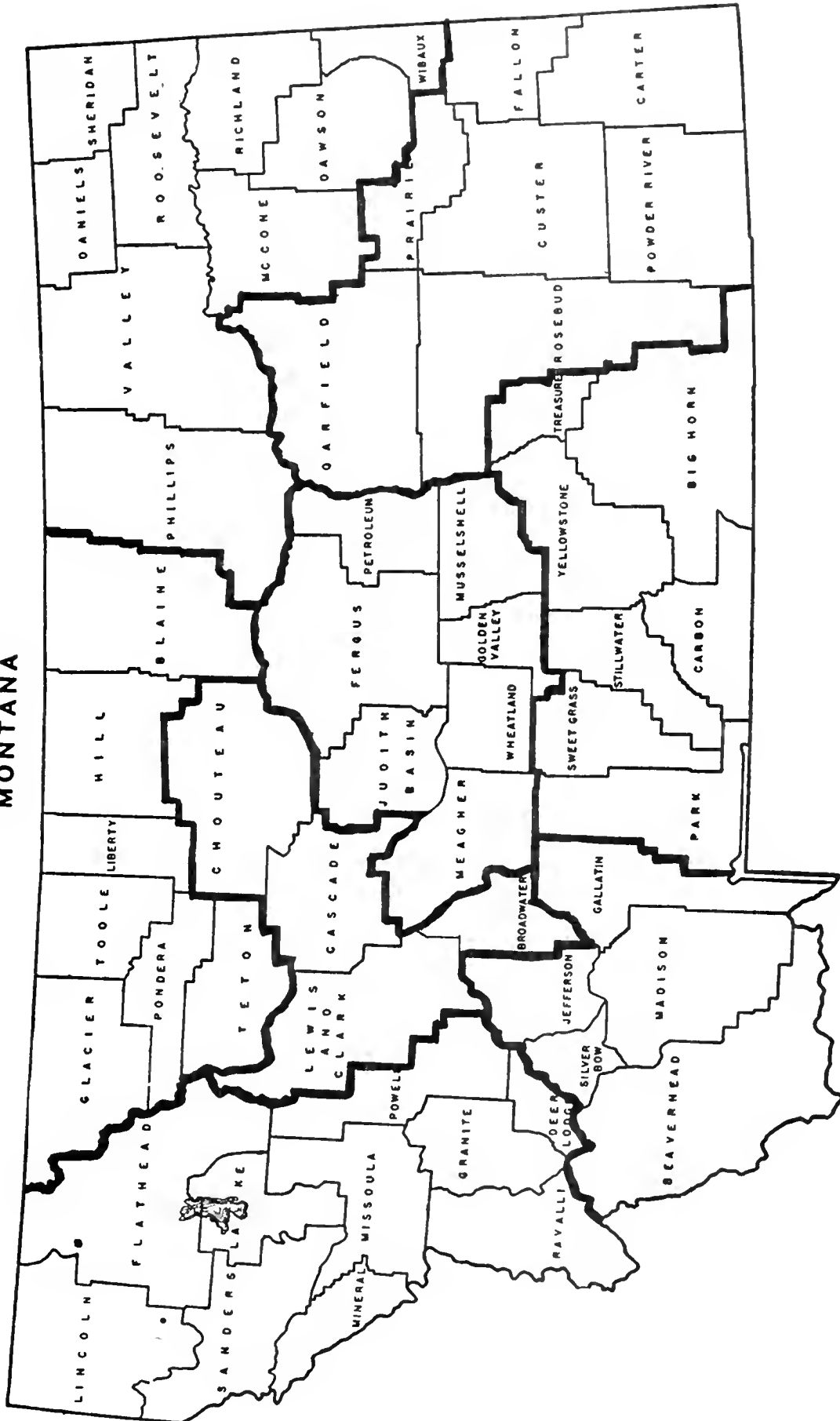
A large, stylized handwritten signature in cursive script, reading "James T. Harrison". The signature is written in dark ink and is positioned over the typed name and title.

James T. Harrison  
Chief Justice

hd



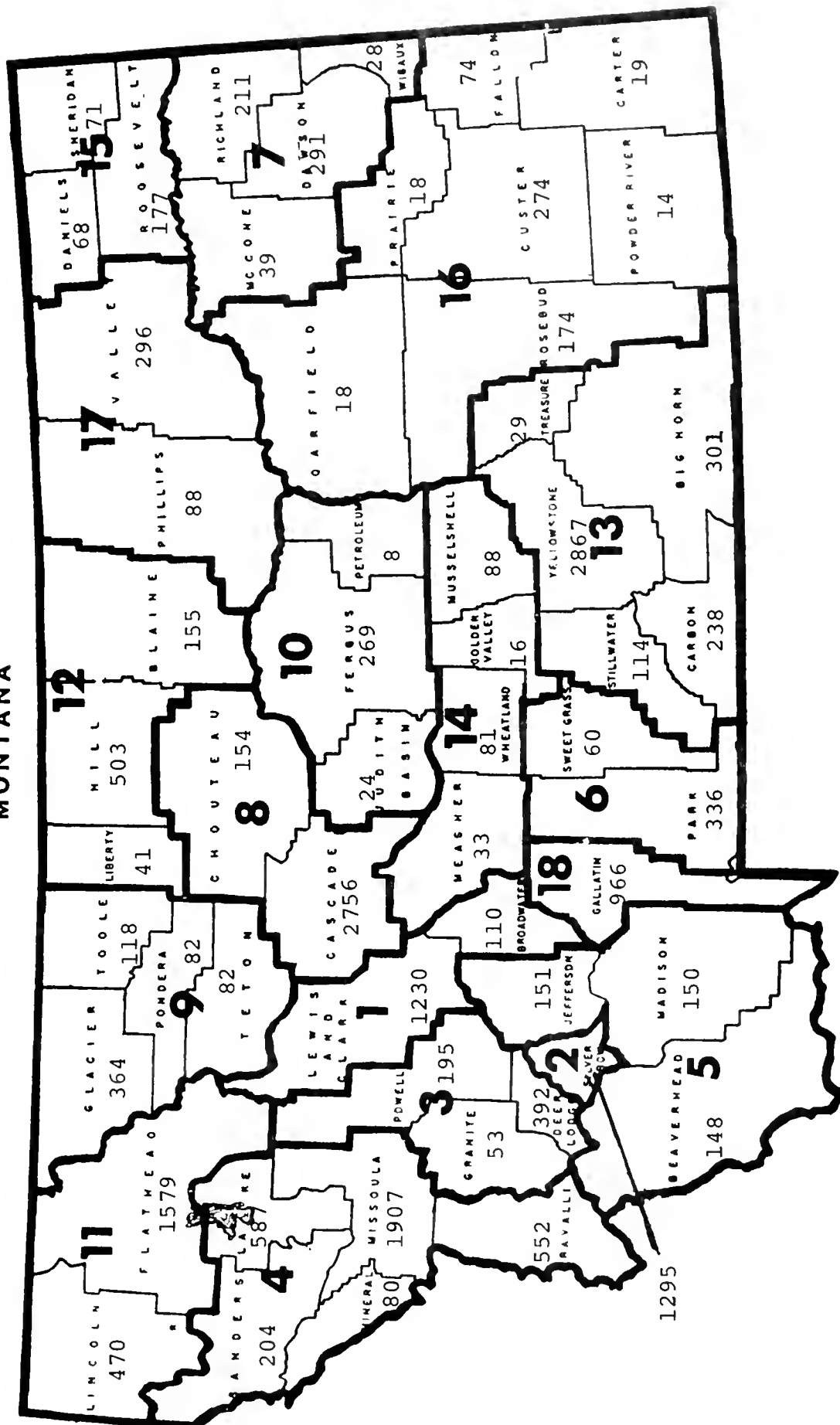
APPENDIX D  
 Chief Justices Proposed  
 Administrative Districts  
**MONTANA**





Montana Judicial Districts  
1974 Casefilings By County

# MONTANA





# MONTANA







APPENDIX G  
District Ranks, 1974

<u>District</u>	<u>Population</u>	<u>Area</u>	<u>Population Density</u>	<u>Miles Driven</u>	<u>Case-To-Pop</u>	<u>Casefilings 1974</u>
1	6	15	6	16	1	5
2	5	18	1	18	4	6
3	12	14	8	13	9	10
4	2	4	4	1	6	3
5	14	3	15	3	10	13
6	17	16	12	11	7	15
7	11	9	11	9	12	12
8	3	12	2	15	3	2
9	8	6	10	7	12	9
10	16	10	14	10	14	17
11	4	7	7	4	2	4
12	10	8	13	14	8	8
13	1	2	5	8	3	1
14	18	11	17	6	11	18
15	13	13	9	5	15	16
16	9	1	18	2	13	11
17	15	5	16	12	12	14
18	7	17	3	17	5	7

Ranks are in order from the largest to the smallest.



# APPENDIX H

## CASE FILINGS BY DISTRICT AND BY COUNTY

<u>District</u>	<u>No. Judges</u>	<u>1960</u>	<u>1964</u>	<u>1970</u>	<u>1974</u>
<u>1</u>	<u>2</u>	<u>602</u>	<u>708</u>	<u>1,039</u>	<u>1,340</u>
Lewis & Clark		516	632	927	1,230
Broadwater		84	76	112	110
<u>2</u>	<u>2</u>	<u>986</u>	<u>1,017</u>	<u>1,058</u>	<u>1,295</u>
Silver Bow					
<u>3</u>	<u>1</u>	<u>634</u>	<u>586</u>	<u>691</u>	<u>640</u>
Powell		141	146	213	195
Granite		71	76	55	53
Deer Lodge		422	364	423	392
<u>4</u>	<u>3</u>	<u>1,173</u>	<u>1,471</u>	<u>1,875</u>	<u>2,803</u>
Missoula		699	877	1,179	1,907
Mineral		43	68	58	80
Lake		345	366	510	587
Ravalli		283	322	350	552
Sanders		113	75	121	204
<u>5</u>	<u>1</u>	<u>277</u>	<u>290</u>	<u>395</u>	<u>449</u>
Beaverhead		101	116	159	148
Jefferson		63	62	82	151
Madison		113	112	154	150
<u>6</u>	<u>1</u>	<u>343</u>	<u>245</u>	<u>273</u>	<u>396</u>
Park		306	202	232	336
Sweetgrass		37	43	41	60
<u>7</u>	<u>1</u>	<u>542</u>	<u>744</u>	<u>513</u>	<u>569</u>
Dawson		267	238	225	291
McCone		31	32	40	39
Richland		219	458	222	211
Wibaux		25	16	26	28

<u>District</u>	<u>No. Judges</u>	<u>1960</u>	<u>1964</u>	<u>1970</u>	<u>1974</u>
8	3	2,341	2,956	1,665	2,910
Cascade		2,190	2,782	1,480	2,756
Chouteau		151	174	185	154
9	1	673	643	787	646
Teton		66	87	75	82
Pondera		108	84	120	82
Toole		221	191	238	118
Glacier		278	281	354	364
10	1	207	293	257	301
Fergus		156	244	224	269
Judith Basin		39	36	28	24
Petroleum		12	13	5	8
11	2	793	1,063	1,664	2,049
Flathead		670	854	1,172	1,579
Lincoln		123	209	492	470
12	1	681	586	524	699
Liberty		32	27	20	41
Hill		469	388	344	503
Blaine		180	171	160	155
13	3	2,205	2,634	2,867	3,599
Yellowstone		1,754	2,058	2,306	2,917
Big Horn		217	299	294	301
Carbon		163	196	181	238
Stillwater		55	64	68	114
Treasure		16	17	18	29
14	1	228	209	204	218
Meagher		55	81	39	33
Wheatland		79	53	74	81
Golden Valley		13	12	15	16
Musselshell		81	63	76	88
15	1	305	331	309	316
Roosevelt		156	184	185	177
Daniels		71	71	66	68
Sheridan		78	76	58	71

<u>District</u>	<u>No. Judges</u>	<u>1960</u>	<u>1964</u>	<u>1970</u>	<u>1974</u>
<u>16</u>	<u>2</u>	<u>460</u>	<u>498</u>	<u>495</u>	<u>591</u>
Custer		207	260	273	274
Carter		19	26	25	19
Fallon		75	75	47	74
Prairie		11	19	14	18
Powder River		17	22	44	14
Garfield		26	20	19	18
Rosebud		105	76	73	174
<u>17</u>	<u>1</u>	<u>336</u>	<u>492</u>	<u>454</u>	<u>374</u>
Phillips		56	68	70	88
Valley		280	424	384	296
<u>18</u>	<u>1</u>	<u>595</u>	<u>621</u>	<u>798</u>	<u>966</u>
Gallatin		595	621	798	966

\*These figures are taken from the "Survey of Judicial District Caseload Filings" conducted by the Subcommittee on Judiciary and completed by the clerks of district courts.



# APPENDIX I

## 1970 Casefiling to Population Ratio by County

County	1970 Population	1970 Casefiling	Ratio Casefiling to Population
Beaverhead	8,187	159	1:51
Big Horn	10,057	294	1:34
Blaine	6,727	160	1:42
Broadwater	2,526		
Carbon	7,080	181	1:39
Carter	1,956	25	1:78
Cascade	81,804	1,480	1:55
Choteau	6,473	185	1:34
Custer	12,174	273	1:44
Daniels	3,083	66	1:46
Dawson	11,269	225	1:50
Deer Lodge	15,652	423	1:37
Fallon	4,050	47	1:86
Fergus	12,611	224	1:56
Flathead	39,460	1,172	1:33
Gallatin	32,505	798	1:40
Garfield	1,796	19	1:94
Glacier	10,783	354	1:30
Golden Valley	931	15	1:62
Granite	2,737	55	1:49
Hill	17,358	344	1:50
Jefferson	5,238	82	1:63
Judith Basin	2,667	28	1:95

County	1970 Population	1970 Casefiling	Ratio Casefiling to Population
Lake	14,445	510	1:28
Lewis & Clark	33,281	927	1:35
Liberty	2,359	20	1:117
Lincoln	18,063	492	1:36
Madison	5,014	154	1:32
McCone	2,875	40	1:71
Meagher	2,122	39	1:54
Mineral	2,958	58	1:51
Missoula	58,263		
Musselshell	3,734	76	1:49
Park	11,197	232	1:48
Petroleum	675	5	1:135
Phillips	5,386	70	1:76
Pondera	6,611	120	1:55
Powder River	2,862	44	1:65
Powell	6,660	213	1:31
Prairie	1,752	14	1:125
Ravalli	14,409	350	1:41
Richland	9,837	222	1:44
Roosevelt	10,365	185	1:56
Rosebud	6,032	73	1:82
Sanders	7,093	121	1:58
Sheridan	5,779	58	1:99
Silver Bow	41,981	1,058	1:39
Stillwater	4,632	68	1:68
Sweet Grass	2,980	41	1:72
Teton	6,116	75	1:81



County	1970 Population	1970 Casefiling	Ratio Casefiling to Population
Toole	5,839	238	1:24
Treasure	1,069	18	1:59
Valley	11,471	384	1:29
Wheatland	2,529	74	1:34
Wibaux	1,465	26	1:56
Yellowstone	87,367	2,306	1:37

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TOTALS

694,345



# APPENDIX J

## Population Statistics

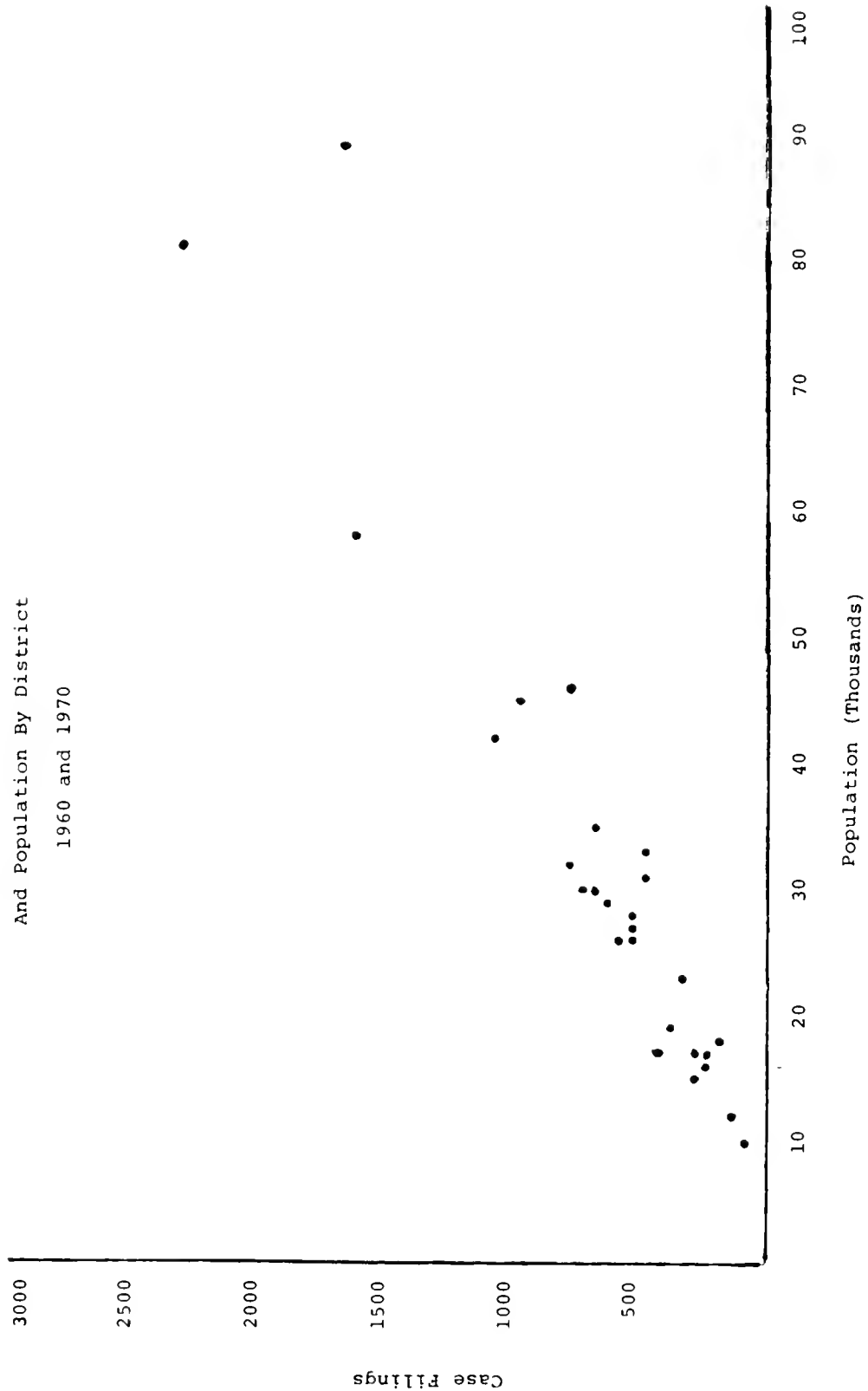
District	No. Judges	Counties	1960 County Population	1970 County Population	County Pop. Change	1960 Dist. Population	1970 Dist. Population	District Pop. Change	1960 Pop. Per Judge	1970 Pop. Per Judge	Pop. Change Per Judge
1	2	*Lewis & Clark Grousewater	28,006 2,804	33,281 2,536	+ 5,275 - 278	30,810	35,807	+ 5,198	15,405	17,904	+ 2,099
2	2	*Silver Bow	46,454	41,981	- 4,474	46,454	41,981	- 4,473	23,227	20,990	- 2,237
3	1	Powell Granite Deer Lodge	7,002 3,014 18,640	6,660 2,737 15,652	- 342 - 277 - 2,988	28,656	25,049	- 3,607	28,656	25,049	- 3,607
4	3	*Missoula Mineral Lake Ravalli Sanders	44,663 3,037 13,104 12,341 6,880	58,263 2,958 14,445 14,409 7,093	+13,600 - 79 + 1,341 + 2,078 + 213	80,025	97,168	+17,143	26,675	32,389	+ 5,714
5	1	Beaverhead Jefferson Madison	7,194 4,297 5,211	8,187 5,238 5,014	+ 993 + 941 - 197	16,702	18,439	+ 1,737	16,702	18,439	+ 1,737
6	1	Park Sweet Grass	13,168 3,290	11,197 2,980	- 1,921 - 310	16,458	14,177	- 2,281	16,458	14,177	- 2,281
7	1	Dawson McCone Richland Wibaux	12,314 3,321 10,504 1,698	11,269 2,875 9,837 1,435	- 1,045 - 446 - 631 - 233	27,837	25,446	- 2,391	27,837	25,446	- 2,391
8	3	*Cascade Chouteau	73,418 7,348	81,804 6,473	+ 8,386 - 875	80,766	88,277	+ 7,511	26,922	29,436	+ 2,504
9	1	Teton Pondera Toole Glacier	7,295 7,653 7,904 11,565	6,116 6,611 5,839 10,783	- 1,179 - 1,042 - 2,065 - 782	34,417	29,349	- 5,068	34,417	29,349	- 5,068
10	1	Fergus Judith Basin Petroleum	14,018 3,085 1,994	12,611 2,667 675	- 1,407 - 418 - 219	17,997	15,953	- 2,044	17,997	15,953	- 2,044

District	No. Judges	Countries	1960 County Population	1970 County Population	County Pop. Change	1960 Dist. Population	1970 Dist. Population	District Pop. Change	1960 Pop. Res. Judge	1970 Pop. Per Judge	Pop. Change Per Judge
11	2	*Flathead Lincoln	32,965 12,537	39,460 18,063	+ 6,495 + 5,526	45,502	57,523	+12,021	22,751	28,762	+ 6,011
12	1	Liberty *Hill Blaine	2,624 18,653 8,091	2,359 17,358 6,727	- 265 - 1,295 - 1,364	29,368	26,444	- 2,924	29,368	26,444	- 2,924
13	3	*Yellowstone Big Horn Carbon Stillwater Treasurer	79,016 10,007 8,317 5,526 1,345	87,367 10,057 7,080 4,632 1,069	+ 8,351 + 50 - 1,237 - 894 - 276	104,211	110,205	+ 5,994	34,737	36,735	+ 1,998
14	1	Meagher Wheatland Golden Valley Musselshell	2,616 3,026 1,203 4,888	2,122 2,259 931 3,734	- 494 - 767 - 272 - 1,154	11,733	9,316	- 2,417	11,733	9,316	- 2,417
15	1	Roosevelt Daniels Sheridan	11,731 3,755 6,458	10,365 3,083 5,779	- 1,366 - 672 - 679	21,944	19,227	- 2,717	21,944	19,227	- 2,717
16	2	Custer Carter Fallon Prairie Powder River Garfield Rosebud	13,227 2,493 3,997 2,318 2,485 1,981 6,187	12,174 1,956 4,050 1,752 2,862 1,796 6,032	- 1,053 - 537 + 53 - 566 + 377 + 185 - 155	32,688	30,622	- 2,066	16,344	15,311	- 1,033
17	1	Phillips Valley	6,027 17,080	5,386 11,471	- 641 - 5,609	23,107	16,857	- 6,250	23,107	16,857	- 6,250
18	1	*Gallatin	26,045	32,505	+ 6,460	26,045	32,505	+ 6,460	26,045	32,505	+ 6,460

\* Denotes counties with urban centers of 10,000 or more population.

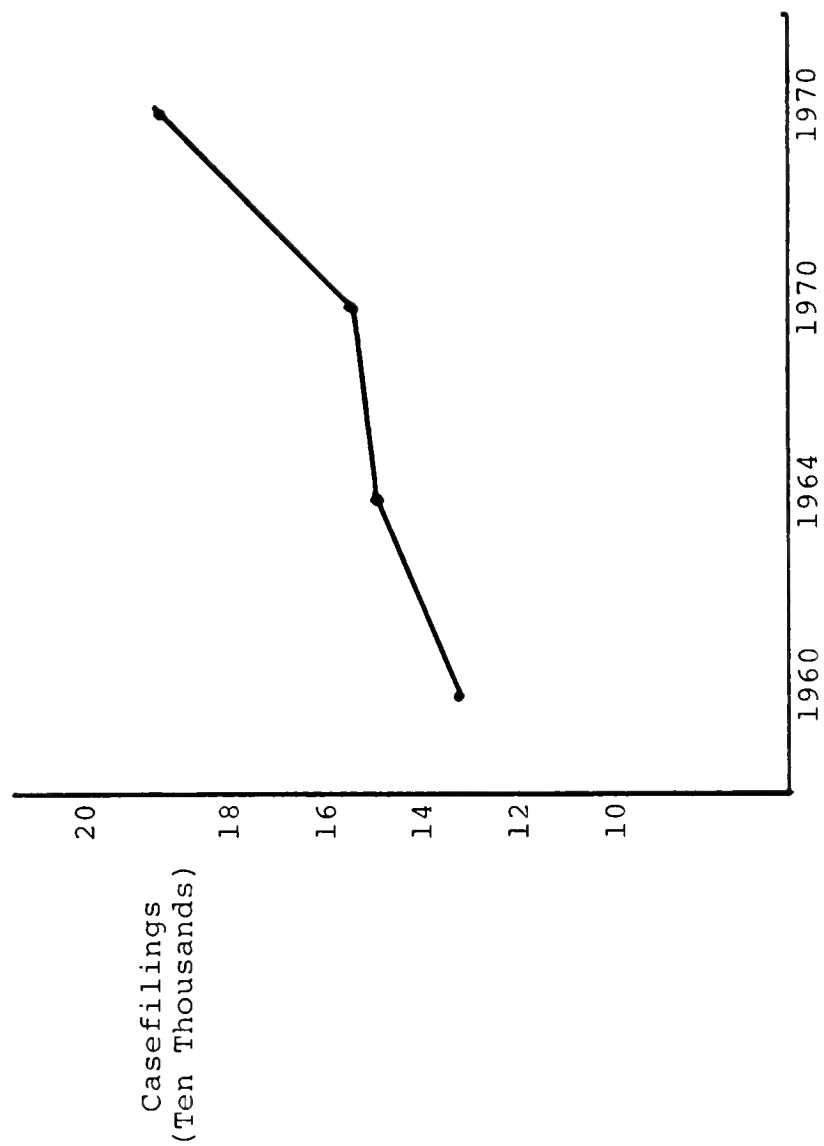
APPENDIX K

Relationship Between Case Filings  
And Population By District  
1960 and 1970





APPENDIX L  
1960-1974 Casefiling Change







# APPENDIX M

## Montana's 28 District Judges Mileage Driven Fiscal 74, 75 and combined totals

<u>District Judges</u>	<u>1974</u>	<u>1975</u>	<u>1974 &amp; 1975</u>
Judge Allen	14,500	15,632	30,132
Judge Bennett	486	794	1,280
Judge Blair	18,631	16,325	34,956
Judge Boyd	7,078	11,281	18,359
Judge Bradford	1,498	1,696	3,194
Judge Brownlee	10,664	7,470	18,134
Judge Coate	16,232	14,495	30,727
Judge Dignan	7,458	5,956	13,414
Judge Dussault	10,872	11,504	22,376
Judge Freebourn	1,184	2,394	3,578
Judge Green	7,451	9,292	16,743
Judge Gulbrandson	12,238	11,493	23,731
Judge Hatfield	3,352	2,678	6,030
Judge Keller	9,421	8,212	17,633
Judge Lessley	2,274	3,702	5,976
Judge Luedke	4,728	3,386	8,114
Judge Martin	7,957	8,898	16,855
Judge McKinnon	12,086	16,346	28,432
Judge McPhillips	14,041	12,667	26,708
Judge Meloy	3,098	4,752	7,850
Judge Nelson	959	1,156	2,115
Judge Olsen	-0-	840	840
Judge Sande	4,914	4,559	9,473
Judge Shanstrom	8,046	7,462	15,508
Judge Sorte	16,553	13,831	30,384
Judge Sykes	7,582	7,384	14,966
Judge Thomas	6,334	9,602	15,936
Judge Wilson	3,832	2,689	6,521
Totals	213,469	216,496	429,965
Average miles driven	7,624	7,732	15,356

Source: Office of the Court Administrator.

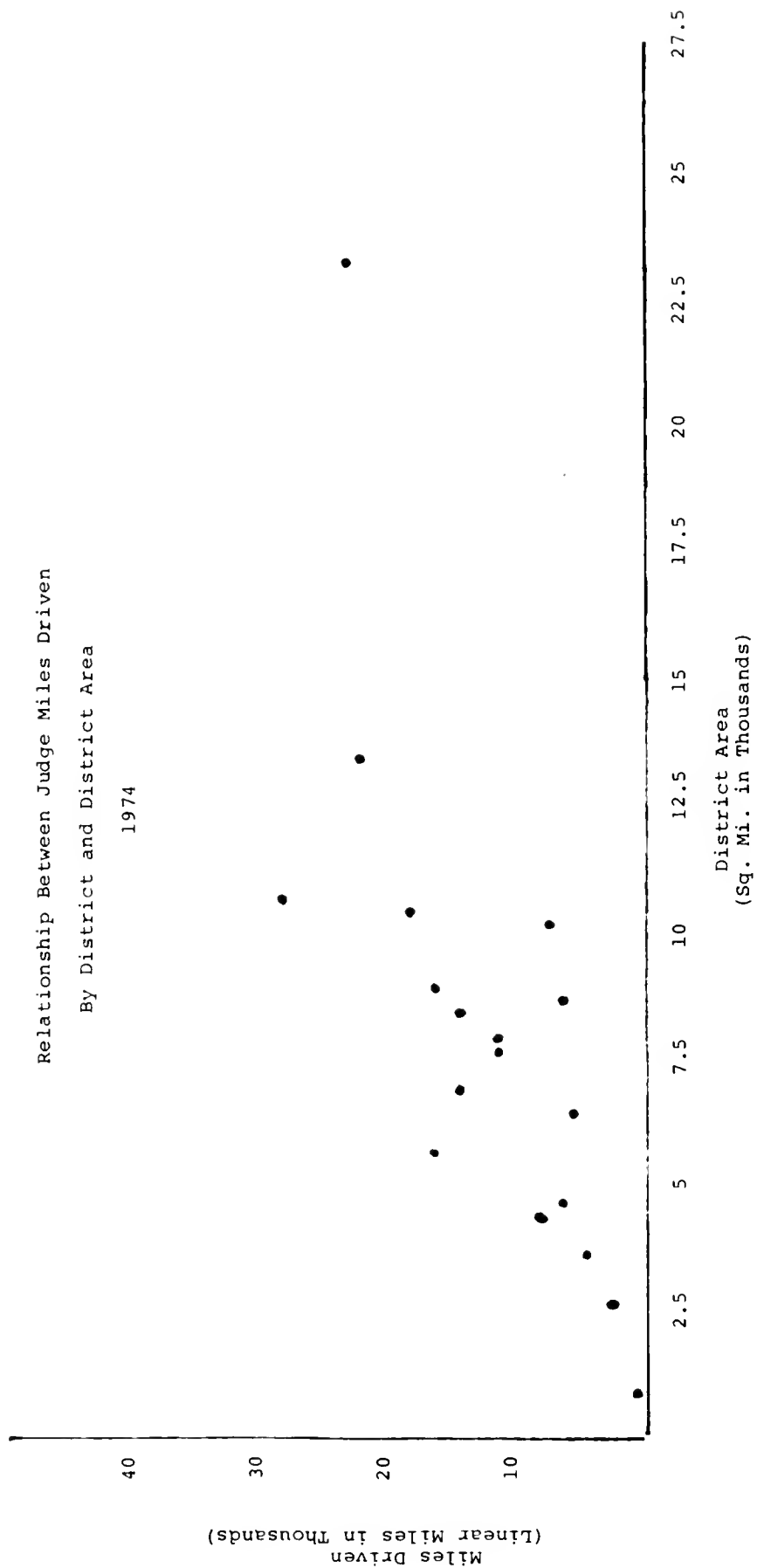


# APPENDIX N

## Relationship Between Judge Miles Driven

By District and District Area

1974





# APPENDIX O

## Number of Attorneys By Judicial District

District	1970 Population <sup>1</sup>	Number of Attorneys <sup>2</sup>
1	35,807	213
2	41,981	109
3	25,049	27
4	97,168	203
5	18,439	21
6	14,177	20
7	25,446	24
8	88,277	164
9	29,349	42
10	15,953	22
11	57,523	92
12	26,444	33
13	110,205	247
14	9,316	12
15	19,227	18
16	30,622	33
17	16,857	16
18	32,505	64
TOTALS		
18	694,345	1,360

### Sources:

1. U.S. Department of Commerce, Bureau of Census, 1970 Census of Population, Number of Inhabitants: Montana (Washington, D.C.: U.S. Government Printing Office, 1970), p.12.
2. Legal Directories Publishing Company Inc., The Mountain States Legal Directory, 1974-1975 (Los Angeles: Legal Directories Publishing Company 1974) pp. 217-247.



OFFICE OF THE  
CLERK OF THE DISTRICT COURT  
FLATHEAD COUNTY  
KALISPELL, MONTANA 59901

**RECEIVED**  
SEP 5 - 1975  
MONTANA LEGISLATIVE  
COUNCIL

755-5300  
PHONE ~~752-4251~~  
BOX 897

JOHN VAN  
CLERK

BLOSSOM WHITE  
CHIEF DEPUTY

MARGARET FARRIS  
DEPUTY

MAMIE RUTLEDGE  
DEPUTY

LYNNE MILLER  
DEPUTY

LAURIE REPMAN  
DEPUTY

Dick Hargesheimer  
Legislative Researcher  
Montana Legislative Council  
Helena, Montana 59601

Dear Mr. Hargesheimer:

I have completed the attached survey of judicial district caseload filings as requested by you. I have a number of reservations in submitting the survey as it does not reflect the workload of either my office or the district judges. In looking at the survey one would wonder what people are talking about in wanting to establish additional judicial districts, changing the present ones or adding additional judges.

I do not mean to criticize the survey, yourself, nor try to imply anything, but I do feel there should be an explanation. The number of cases tried in any given year does not show a true picture of the actual workload. I feel that out of the various 56 counties you are going to get a number of different interpretations. There were hundreds of actual trials which I did not report as they were handled as ex parte matters. There were hundreds of others which I did not report as a trial, yet many of these matters took hours and even days to hear. They were such things as criminal pre-sentence hearings, orders to show cause relative to support or custody, evidentiary hearings, revocation hearings on criminals, citations, writs, aftermath hearings such as modifications of divorce decrees, dependent and neglected children, juveniles or adoptions.

Another item which was not reported under pre-trial conferences was demurrers, motions and oral arguments. Many of this type of hearings are heard between the attorneys and the judges prior to a pre-trial conference just getting a case in condition to be tried. Countless other cases are settled as a result of these hearings and never come to trial.

Under domestic relations I included divorces, annulments, separate maintenance, custody, support and dependent and neglected children. Some of the counties may not have reported the same type of cases and listed them under matters not otherwise classified.

I have personally spent many, many days in Court in which we have handled up to seven or more divorces, a number of debt actions, quiet title actions, many probates, two or more criminal arraignments and while many of these are actually trials, none will show up on the survey as they were done under law and motion. Twice in the past two months one of my deputies has come to work at 8:00 a.m., put in her eight hours and has then been asked to stay and clerk a trial or hearing and both lasted until midnight. Othertimes I have clerked a single trial which has lasted a number of days, yet is only classified as one trial having been held.

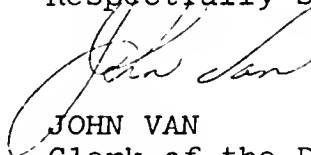
I do not show us having held any criminal trials other than jury trials. Normally, in the event of a "guilty" plea there is no trial. There is, however, a pre-sentence hearing in aggravation or mitigation of sentencing. In the event of a "not guilty" plea there is a jury trial held.

Another item I feel I should mention is that cases which have been filed over a number of years are those which are trial during a certain year. In other words, cases which are filed in 1970 are tried in a later year. There can be a number of attorney conferences in one particular case which are held over a number of years and the case is settled through pre-discovery work.

In Flathead County each of the two district judges orders all of his inactive cases brought up on a show cause order relative to dismissal. Those cases are either brought current, show excusable cause or are dismissed for lack of prosecution. I would say that we are as current as any county in the state in any category except probates - I feel we are probably ahead and more current in this department. Countless hours are spent between the judges and attorneys working on a particular case which will not be shown as an attorney's conference or pre-trial conference as the attorneys just show up and ask for the judge's help.

In conclusion I know that I can seldom pass the Courthouse at night without seeing lights in one or both judge's chambers. As president of the Montana Association of Clerks of Court I know from traveling throughout the state, talking with fellow clerks and other judges that we are all busy with an ever increasing workload.

Respectfully submitted,



JOHN VAN  
Clerk of the District Court



# APPENDIX Q

## Selected Data on Court Administrative Offices

<i>State or other jurisdiction</i>	<i>Title</i>	<i>Date of establishment</i>	<i>Citation</i>
Alabama	Court Administrator(a)	1971	Act 1503 of 1971
Alaska	Administrative Director	1959	Alas. Const., Art. IV, Sec. 16, as amended
Arizona	Administrative Director of the Courts	1960	Ariz. Const., Art. VI, Sec. 7
Arkansas	Executive Secretary, Judicial Dept.	1965	Act 496 of 1965 as amended (Ark. Stat. Ann. 22-142, et seq.)
California	Administrative Director of the Courts	1960	Calif. Const., Art. VI, Sec. 6, Govt. Code Sec. 68500-68500.5
Colorado	State Court Administrator	1959	Colo. Const., Art. VI, Sec. 5(3); C.R.S. 1973, Sec. 13-3-101
Connecticut	Chief Court Administrator	1965	Conn. Rev. Gen. Stat., Sec. 51-2
Delaware	Director, Administrative Office of the Courts	1971	Del. Code Ann., Title 10, Sec. 128
Florida	State Court Administrator	1972	Supreme Court Rules.
Georgia	Director, Administrative Office of the Courts	1973	Ga. Laws 1973, p. 288
Hawaii	Administrative Director of Courts	1959	Act 259, Session Laws of Hawaii, 1959
Idaho	Administrative Director of the Courts	1967	Session Laws of 1967, Ch. 39, p. 61, as amended, 1974
Illinois	Administrative Director	1959	Ill. Const., Art. VI, Sec. 16 (1970)
Indiana	Supreme Court Administrator-Commissioner	1968	Supreme Court Internal Rule 12
	Executive Director, Div. of State Court Administration	1975	I.C. 1971, 33-2.1-7-1
Iowa	Court Administrator	1971	1975 Code of Ia., Ch. 685
Kansas	Judicial Administrator	1965	K.S.A. 20-318, et seq.
Kentucky(l)	Administrative Director of the Courts	1954	Ky. Rev. Stat. 22.110 & 120 (1960)
Louisiana	Judicial Administrator	1954	La. Const. of 1974, Art. V, Sec. 7; La. Rev. Stat. 13:9
Maine	Administrative Assistant to Chief Justice	1970	Ch. 467, Laws of 1969
Maryland	State Court Administrator	1955	Md. Code, Courts Art., Sec. 13-101
Massachusetts	Executive Secretary, Supreme Judicial Court for the Commonwealth	1956	Gen. Laws. Ch. 211, Sec. 3A to 3F inserted by Acts of 1956, Ch. 707 & amended by Acts of 1960, Ch. 424; of 1963, Ch. 755; of 1967, Ch. 650; of 1970, Ch. 567
Michigan	Court Administrator	1952	Mich. Const., Art. VI, Sec. 3 (1963)
Minnesota	Court Administrator	1963	Ch. 758, Laws of 1963
Missouri	State Court Administrator	1970	Mo. Const., Art. V, Sec. 4, Cl. 2, as amended
Montana	State Court Administrator	1975	...
Nebraska	State Court Administrator	1972	Neb. Const., Art. V, Sec. 1
Nevada	Court Administrator	1971	Nev. Rev. Stat. 1.320-.370
New Jersey	Administrative Director of the Courts	1948	Art. VI, Sec. VII., Par. 1, Const. of 1947, N.J. Statutes 2A: 12-1
New Mexico	Director, Administrative Office of the Courts	1959	Sec. 16-6-1, et seq., N.M. Stat., 1953 Compilation
New York	State Administrator(b)	1955(c)	Art. VII-A, Judiciary Law
North Carolina	Director, Administrative Office of the Courts	1965(d)	Ch. 310, 1965 Session Laws
North Dakota	State Court Administrator, Judicial Council(e)	1971	Sec. 27-02-05.1. N.D. Century Code
Ohio	Administrative Director of the Courts	1955	Rev. Code, Secs. 2503.05, .281, .282, Art. IV, Sec. 5, Ohio Const.
Oklahoma	Administrative Director of the Courts	1967	Art. VII, Sec. 6. Const. of Okla. Enrolled H.B. 1208 (May 10, 1968)
Oregon	State Court Administrator	1971(d)	Ore. Laws 1971, Ch. 193, Secs. 1-4
Pennsylvania	State Court Administrator	1968	Const. of Pa., Art. V, Sec. 10(b)
Rhode Island	Court Administrator	1969	R.I. Pub. Laws 1969, c. 239
South Carolina	Court Administrator	1973	S.C. Const., Art. V.
South Dakota	Court Administrator	1974	1969, Ch. 239
Tennessee	Executive Secretary of the Supreme Court	1964	Pub. Acts 1963, Ch. 86, Secs. 16-325, et seq., T.C.A.
Texas	Executive Director, Judicial Council	1974	...
Utah	State Court Administrator	1973	78-3-18, et seq., UCA 1953
Vermont	Court Administrator(f)	1967	1967, No. 174, Sec. 2 (4 V.S.A. 8 & 21)
Virginia	Executive Secretary, Supreme Court	1952	Va. Code Ann., Secs. 17-111.1, 17-111.2 (supp. 1950)

### Selected Data on Court Administrative Offices

<i>State or other jurisdiction</i>	<i>Title</i>	<i>Date of establishment</i>	<i>Citation</i>
Washington	Administrator for the Courts	1957	Rev. Code of Wash. 2.56.010
West Virginia	Director, Administrative Office of the Supreme Court of Appeals	1945	W.Va. Code §1-1-15, et seq.
Wisconsin	Administrative Director of the Courts(g)	1962	Wis. Stats., Sec. 257.19
Wyoming	Court Coordinator	1974	Sup. Ct. Rule
Dist. of Col.(h)	Executive Officer of D.C. Courts	1971	D.C. Code 1703; 84 Stat. 510, P.L. 91-358 (July 29, 1970)
Puerto Rico	Administrative Director, Office of Court Administration	1952	P.R. Laws Ann., Title 4, Secs. 331-34 (1965)

(a) Constitutional amendment in 1973 provides for an Administrative Director of Courts to administer the entire court system with the Court Administrator administering state trial courts. Duties of Administrative Director are spelled out in Act 1205, approved October 10, 1975.

(b) State Administrator or State Administrative Judge also serves as Secretary, Judicial Conference of New York and Administrative Board.

(c) 1955, Judicial Conference and Office of State Administrator; 1962, Administrative Board; 1974, Office of State Administrative Judge and Office of Court Administration.

(d) Previous position of Administrative Assistant to the Chief Justice was created in 1951 in North Carolina and in 1953 in Oregon.

(e) Serves as Secretary to Judicial Council.

(f) Also clerk of the Supreme Court.

(g) In 1974 position of Executive Officer of Supreme Court created to administer Supreme Court and related agencies while Administrative Director is responsible for administration of trial court.

(h) Reflects 1974 survey. Later information not available.

(i) See footnote (d) on Table 10.

# APPENDIX R

## Selected Data on Court Administrative Offices

State or other jurisdiction	Administrator			Number on staff	Appropriation for administrative office	
	Appointed by	Term of office	Salary		Amount(a)	Period
Alabama	CJ	All	\$19,713	3	\$ 75,000	10/1/73-9/30/74
Alaska	CJ(b)		48,576	30	980,000	7/1/75-6/30/76
Arizona	SC		30,240	3(c)	95,000(d)	7/1/75-6/30/76
Arkansas	CJ(e)		25,064	10	274,105	7/1/75-6/30/77
California	JC		45,501	44	1,235,448(f)	7/1/74-6/30/75
Colorado	SC		30,600	54	1,193,284(g)	7/1/75-6/30/76
Connecticut	(h)		38,000	48	697,325	7/1/74-6/30/75
Delaware	CJ		30,000	11	346,000	7/1/75-6/30/76
Florida	SC		32,000	32	969,168	7/1/75-6/30/76
Georgia	JC		24,500-32,500	29	172,620	7/1/75-6/30/76
Hawaii	CJ(b)	serve	40,000	20	701,676	7/1/76-6/30/77
Idaho	SC		29,000	14	250,000	7/1/75-6/30/76
Illinois	SC		45,000	26	613,000	7/1/75-6/30/76
Indiana	SC		27,000(i)	4	(j)	(i)
Iowa	SC		22,000(k)	2	(j)	(i)
			23,540	15	337,230(g)	7/1/75-6/30/76
Kansas	SC	at	27,500	6	(j)	(i)
Kentucky(v)	SC		26,000	8	(j)	(i)
Louisiana	SC		39,500	5(l,m)	124,000	7/1/75-6/30/76
Maine	CJ		24,500	5	178,000	1/1/75-1/1/77
Maryland	CJ		39,200	29	820,697	7/1/75-6/30/76
Massachusetts	SC		30,554	3	205,455(g)	7/1/75-6/30/76
Michigan	SC		40,799	92	4,079,135	7/1/75-6/30/76
Minnesota	SC		25,000-32,000	6	120,000	7/1/73-6/30/75
Missouri	SC		27,025	26	138,295	7/1/75-6/30/76
Montana	SC		pleasure	14,000	1½	30,000(g)
Nebraska	CJ		30,000	8	155,000(d)	7/1/75-6/30/76
Nevada	SC		22,500	2	33,000	7/1/71-7/1/72
New Jersey	CJ		37,770-50,993	82	1,460,516(d)	7/1/75-6/30/76
New Mexico	SC		26,400	23	(j)	(i)
New York	(n)		57,000	237	5,444,463	4/1/75-3/31/76
North Carolina	CJ	of	32,500	62	914,809	7/1/75-6/30/76
North Dakota	SC		24,000(o)	6	300,000	7/1/75-6/30/77
Ohio	SC		34,400(p)	8	(j)	(i)
Oklahoma	SC		26,000	3(m)	(j)	(i)
Oregon	CJ		32,556	27	680,000	7/1/75-6/30/77
Pennsylvania	SC	appointing	40,000	34	868,000	7/1/75-6/30/76
Rhode Island	CJ		20,584-23,478(q)	7	180,000(d)	7/1/75-6/30/76
South Carolina	CJ		27,000	3	115,000	7/1/74-6/30/75
South Dakota	SC		22,500	8	(j)	(i)
Tennessee	SC		36,052	6	420,883(r)	7/1/75-6/30/76
Information not available						
Texas		authority				
Utah	SC		27,500	5	157,500	7/1/75-6/30/76
Vermont	SC		25,800	6	(i)	(i)
Virginia	SC		30,524	28	426,160	7/1/75-6/30/76
Washington	SC(s)		30,825	18	799,484	7/1/75-6/30/77
West Virginia	SC		30,000	4	200,000	7/1/75-6/30/76
Wisconsin	SC		38,000	22	549,306(g)	7/1/75-7/1/76
Wyoming	SC		21,000	1	(j)	(i)
Dist. of Col.(t)	(u)		36,000	68	1,551,355	7/1/73-6/30/74
Puerto Rico	CJ		30,600	208	2,419,960	7/1/75-6/30/76

### Symbols:

SC—the State's court of last resort; CJ—the Chief Justice or Chief Judge of the State's court of last resort; JC—Judicial Council.

(Footnotes on next page.)

7 1  
Selected Data on Court Administrative Offices  
Footnotes

(a) Appropriations for the various offices are not necessarily comparable because of variations in the time periods covered and the purposes of the appropriations. In some States amounts shown include appropriations for travel and expenses of trial court judges.

(b) With approval of Supreme Court.

(c) Arizona: in addition, a federally funded planning section which also administers Supreme Court sub-grants staff—Chief of Planning (professional), fiscal officer (professional), secretary (clerical), and financial and statistical clerk (professional).

(d) Estimate, since budget not segregated from court budget. Nebraska: includes \$65,000 in federal funds. New Jersey: approximate amount for salaries, including 12 positions with assignment judges, with duties not directly related to administrative office.

(e) With approval of Judicial Council.

(f) Total appropriation for Judicial Council, including administrative office of the courts, but not including salaries of assigned judges, circuit justice court judges, and federal grant projects.

(g) Includes \$559,000 in federal funds, \$325,000 of which is for data processing and computer rental; also includes \$81,331 in general fund money for judicial conference, nominating and qualification commission, judicial training, and retired judges' per diem. Iowa: includes \$145,958 in federal funds. Massachusetts: includes \$57,668 to be used as LEAA matching funds. Montana: includes \$27,000 grant. Wisconsin: includes \$176,900 in federal funds.

(h) Appointed by General Assembly upon nomination by the Governor.

(i) Supreme Court Administrator.

(j) Not segregated from general appropriation of court of last resort. New Mexico: \$10 million for State's entire judiciary.

(k) Executive Director, Division of State Court Administration.

(l) In Louisiana, also executive officer of judiciary commission.

(m) Louisiana: in addition, deputy judicial administrator and secretary. Oklahoma: in addition, research assistant under federal grant.

(n) Appointed by chairman of the Administrative Board, who is the Chief Judge of the Court of Appeals, by and with advice and consent of Administrative Board.

(o) Serves as secretary to Judicial Council.

(p) Discretion of the court.

(q) Longevity payments at 7, 15, and 20 years of state service.

(r) Includes salaries of 21 law clerks for members of Supreme Court.

(s) Appointed from list of 5 submitted by Governor.

(t) Reflects 1974 survey. Later information not available.

(u) Joint Committee.

(v) See footnote (d) on Table 10.

Source: The Council of State Governments, State Court Systems, Revised 1976, Lexington, Kentucky: 1976, pp. 34-38.

## APPENDIX S

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A NEW  
5 JUDICIAL DISTRICT, ALTER CERTAIN JUDICIAL DISTRICT  
6 BOUNDARIES, AND CHANGE THE NUMBER OF JUDGES IN CERTAIN  
7 JUDICIAL DISTRICTS; AMENDING SECTIONS 93-301 AND 93-302,  
8 R.C.M. 1947; AND PROVIDING EFFECTIVE DATES."

TO BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11           Section 1. Section 93-301, R.C.M. 1947, is amended to  
12    read as follows:

13 "93-351. Judicial districts defined. In this state  
14 there are ~~eighteen~~ 19 judicial districts, distributed as  
15 follows:

16 First district: Lewis and Clark and Broadwater  
17 counties.

10 Second district: Silver Bow county County.

19 Third district: Deer Lodge, Granite, and Powell  
20 counties.

21 Fourth District: Missoula, Mineral, Lake, and Ravalli,  
24 and Sanders counties.

23 Fifteen District: Beaverhead, Jefferson, and Madison  
24 counties.

25      Sixten district: Park and Sweet Grass counties.

1       Seventh district: Dawson, McCone, Richland, and Wibaux  
2 counties.

3       Eighth district: Cascade and Chouteau counties.

4       Ninth district: Teton, Pondera, Toole, and Glacier  
5 counties.

6       Tenth district: Fergus, Judith Basin, and Petroleum  
7 counties.

8       Eleventh district: Flathead ~~and---Lincoln---counties~~  
9 County.

10      Twelfth district: Liberty, Hill, and Blaine counties.

11      Thirteenth district: Yellowstone, Big Horn, Carbon,  
12 Stillwater, and Treasure counties.

13      Fourteenth district: Meagher, Wheatland, Golden Valley,  
14 and Musselshell counties.

15      Fifteenth district: Roosevelt, Daniels, and Sheridan  
16 counties.

17      Sixteenth district: Custer, Carter, Fallon, Prairie,  
18 Powder River, Garfield, and Rosebud counties.

19      Seventeenth district: Phillips and Valley counties.

20      Eighteenth district: Gallatin county County.

21      Nineteenth district: Lincoln and Sanders counties."

22      Section 2. Section 93-302, R.C.M. 1947, is amended to  
23 read as follows:

24      "93-302. Number of judges. In each judicial district  
25 there must be the following number of judges of the district

1 court, who must be elected by the qualified voters of the  
 2 district, and whose term of office must be ~~six-(6)~~ years, to  
 3 wit: in in the first, second, eleventh, and sixteenth, two  
 4 judges each; in the ~~thirteenth, eighth--and--fourth~~ fourth  
 5 and eighth, three judges; in the thirteenth, four judges;  
 6 and in all other districts, one judge each."

7 Section 3. Section 93-302, R.C.M. 1947, is amended to  
 8 read as follows:

9 "93-302. Number of judges. In each judicial district  
 10 there must be the following number of judges of the district  
 11 court, who must be elected by the qualified voters of the  
 12 district, and whose term of office must be ~~six-(6)~~ years, to  
 13 wit: in in the first, second, eleventh, and sixteenth, and  
 14 eighteenth, two judges each; in the ~~thirteenth, eighth--and~~  
 15 ~~fourth~~ fourth and eighth, three judges; in the thirteenth,  
 16 four judges; and in all other districts, one judge each."

17 Section 4. New judges -- how selected. The judgeships  
 18 created by this act are to be filled initially in the same  
 19 manner as judicial vacancies are filled.

20 Section 5. Effective dates. Sections 1, 2, and 4 of  
 21 this act are effective July 1, 1977. Section 3 of this act  
 22 is effective July 1, 1980.

-End-





## APPENDIX T

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

INTRODUCED BY \_\_\_\_\_

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH THE OFFICE  
5 OF COURT ADMINISTRATOR."

6

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8           Section 1. Court administrator -- office created --  
9   appointment -- terms -- compensation. There is established  
0   the office of court administrator. The supreme court shall  
1   appoint a court administrator and fix the salaries of the  
2   court administrator and his assistants. The court  
3   administrator shall hold his position at the pleasure of the  
4   court.

5        section 2. With the approval of the supreme court, the  
6        court administrator may hire assistants to assist him in the  
7        performance of his duties. Neither the court administrator  
8        nor any assistant may practice law in any of the courts of  
9        this state while holding his position.

Section 3. Duties. The court administrator is the administrative officer of the court. Under the direction of the supreme court, the court administrator shall:

3           (1) prepare and present judicial budget requests to  
4   the legislature;

5 (2) collect, compile, and report statistical and other

1 data relating to the business transacted by the courts and  
2 provide such information to the legislature upon request;

3 (3) recommend to the supreme court improvements in the  
4 judiciary; and

5 (4) perform such other duties as the supreme court may  
6 assign.

7 Section 4. Cooperation of court officers. All court  
8 officers, including clerks of district courts, shall comply  
9 with requests made by the court administrator for  
10 information and statistical and financial data bearing on  
11 the business transacted by the courts.

12 Section 5. Federal funds. The supreme court may accept  
13 federal funds to supplement the funds appropriated to the  
14 court for the purpose of carrying out this act.

15 Section 6. Severability. If a part of this act is  
16 invalid, all valid parts that are severable from the invalid  
17 part remain in effect. If a part of this act is invalid in  
18 one or more of its applications, the part remains in effect  
19 in all valid applications that are severable from the  
20 invalid applications.

-End-

## APPENDIX U

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION  
5 93-1906, R.C.M. 1947, TO PROVIDE FOR STATE PAYMENT OF COURT  
6 REPORTERS' SALARIES AND EXPENSES AND FOR COURT REPORTERS'  
7 HOURS BEING SET BY THE DISTRICT JUDGES."

o

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10           Section 1. Section 93-1906, R.C.M. 1947, is amended to  
11    read as follows:

14 "93-1906. Salary, and expenses, and fringe benefits of  
15 reporter -- hours of employment apportionment. Every  
16 reporter-appointed-under-the-provisions-of-this--chapter--is  
17 entitled-to-receive-an-annual-salary-of-not-less-than-twelve  
18 thousand--five--hundred--dollars-(\$12,500)-and-not-more-than  
19 sixteen-thousand-dollars-(\$16,000)-said-salary-to-be-set--by  
20 the--judge--in-the-district-in-which-the-reporter-works--and  
21 no-other-compensation-except-as-provided-in-section-93-1904  
22 provided--however--that--all--transcripts--and--bills--of  
23 exceptions-required-by-the-county-shall-be-furnished-without  
24 cost--payable--in--monthly--installments-out-of-the-general  
25 funds-of-the-counties-comprising-the-district-for--which--he  
is--appointed--according-and-in-proportion-to-the-number-of  
civil-and-criminal-actions--entered--and--commenced--in--the

1 district---courts--of--such--counties--respectively--in--the  
2 preceding-year; and it shall be the duty--of--the--judge--of  
3 such--districts--on-the-first-day-of-January-of-each-year--or  
4 as-soon-thereafter-as-may-be--to--apportion--the--amount--of  
5 such-salary-to-be-paid-by-each-county-in-his-district-on-the  
6 basis-aforesaid; the reporter is allowed, in addition to the  
7 salary--and--fees--above--provided,--in--judicial--districts  
8 comprising--more--than--one--(1)--county,--his--actual--and  
9 necessary--expenses--of--transportation--and--living--when--he--goes  
10 on--official--business--to--a--county--of--his--judicial--district  
11 other--than--the--county--in--which--he--resides,--from--the--time--he  
12 leaves--his--place--of--residence--until--he--returns--thereto; said  
13 expenses--to--be--apportioned--and--payable--in--the--same--way--as  
14 the-salary. (1) A court reporter appointed under this  
15 chapter shall receive a salary paid by the state. In  
16 conference with the district judges, the supreme court shall  
17 set the salary of court reporters.

18 (2) Court reporters are entitled to the fringe  
19 benefits of a classified state employee.

20 (3) The travel and lodging expenses of court reporters  
21 are paid by the state as provided in 59-538, 59-539, and  
22 59-801.

23 (4) The district judge shall set the hours of  
24 employment of his court reporter."

-End-

## APPENDIX V

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_  
2 INTRODUCED BY \_\_\_\_\_  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH ANNUAL  
5 JUDICIAL TRAINING STANDARDS FOR APPELLATE AND TRIAL JUDGES."  
6  
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
8       Section 1. Judicial training -- appellate and trial  
9 judges. In conference with the district court judges, the  
0 supreme court shall establish minimum annual training  
1 requirements for appellate and trial court judges.  
2       Section 2. Judicial training -- arrangements to be  
3 provided. Under the direction of the supreme court, the  
4 court administrator shall make arrangements to provide each  
5 appellate and trial court judge an opportunity to meet the  
6 annual minimum judicial training standards.

-END-



## APPENDIX W

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_  
2 INTRODUCED BY \_\_\_\_\_

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO APPROPRIATE FUNDS  
5 FOR LAW CLERKS FOR DISTRICT JUDGES."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8           section 1. Purpose. The purpose of this act is to  
9 provide funds for law clerks for district judges on a trial  
10 basis. This program is not to continue past the present  
11 biennium unless the program is proven to be worthwhile and  
12 further funding is provided by the next legislature.

13           Section 2. Appropriation.       There is appropriated  
14       \$150,000 from the general fund to the supreme court to  
15       provide law clerks for the district judges for the biennium  
16       ending June 30, 1979.

17           section 3. Court to adopt rules. The supreme court  
18   shall adopt rules for determining which district judges will  
19   receive law clerks.

Section 4. Funds remaining. Any portion of this appropriation remaining at the end of the biennium shall revert.

-End-





## APPENDIX X

1                    \_\_\_\_\_ JOINT RESOLUTION NO. \_\_\_\_\_

2     INTRODUCED BY \_\_\_\_\_

3

4     A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF  
5     REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE CHIEF  
6     JUSTICE OF THE MONTANA SUPREME COURT TO ATTACH TO HIS  
7     STATE-OF-THE-LAW MESSAGE TO EVERY LEGISLATIVE SESSION A  
8     STATISTICAL REPORT OF THE BUSINESS TRANSACTED BY THE  
9     DISTRICT COURTS.

10

11           WHEREAS, the Legislature is directed by the  
12     Constitution to divide the state into judicial districts and  
13     to provide for the number of judges in each district; and

14           WHEREAS, the Legislature may alter the judicial  
15     districts; and

16           WHEREAS, the Legislature cannot determine the needs of  
17     the district courts without meaningful and accurate  
18     statistics; and

19           WHEREAS, judicial data have never been reported and  
20     analyzed on any continuing basis in Montana.

21

22     NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE  
23     OF REPRESENTATIVES OF THE STATE OF MONTANA:

24           That the Chief Justice of the Montana Supreme Court is  
25     requested to attach to his State-of-the-Law Message to each

- 1 Legislature a statistical report of the business transacted
- 2 by the district courts.

-End-

## APPENDIX Y

1                    \_\_\_\_\_ JOINT RESOLUTION NO. \_\_\_\_\_

2     INTRODUCED BY \_\_\_\_\_

3  
4     A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF  
5     REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING A REQUEST  
6     THAT THE USE OF LAW CLERK AND SECRETARIAL ASSISTANCE TO  
7     DISTRICT JUDGES BE EXPLORED BEFORE BILLS CREATING ADDITIONAL  
8     JUDGESHIPS ARE INTRODUCED AND ENACTED IN SUBSEQUENT  
9     LEGISLATIVE SESSIONS.

10  
11           WHEREAS, a Subcommittee on Judiciary studied the  
12     district courts during the 1975-1976 interim; and

13           WHEREAS, after extensive study this subcommittee  
14     recommended the creation of three new judgeships to the  
15     district court system; and

16           WHEREAS, in the past new judgeships have been created  
17     without extensive study of the needs of the judiciary; and

18           WHEREAS, bills are usually introduced in each session  
19     to create new judgeships; and

20           WHEREAS, the Subcommittee on Judiciary received  
21     indications that in some judicial districts the addition of  
22     a law clerk and a secretary might be more advantageous to  
23     the state than the creation of a new judgeship; and

24           WHEREAS, the Supreme Court and its administrator could  
25     more fully explore the uses of law clerks and secretarial

1 assistance for district judges.

2  
3 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE  
4 OF REPRESENTATIVES OF THE STATE OF MONTANA:

5 That it is the hope of this legislature that before any  
6 subsequent legislature creates additional judgeships, the  
7 Supreme Court fully explore the use of law clerks and  
8 secretaries in the district courts.

-End-



